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Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Consideration of reports submitted by States parties under article 19 of the Convention pursuant to the optional reporting procedure

Second periodic reports of States parties due in 1996

Romania*, **, ***

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*** Annexes can be consulted in the files of the Secretariat.

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List of abbreviations

CrC	Criminal code
CrPC	Criminal procedure code
NCrC	New criminal code
NCrPC	New criminal procedure code
MIA	Ministry of Internal Affairs
DCDPAC	Division for the Coordination of Detention and Preventive Arrest Centers
GII	General Inspectorate for Immigration
MJ	Ministry of Justice
NAP	National Administration of Penitentiaries
NATP	National Agency against Trafficking in Persons
NISMVT	National Integrated System for Monitoring Victims of Trafficking
MLFSPE	Ministry of Labor, Family, Social protection and Elderly
NOWP	National Office for Witness Protection
MNE	Ministry of National Education
ISPO	Institute of Studies for Public Order
CPI	County Police Inspectorate
MESRE	Mobile Emergency Service for Resuscitation and Extrication
NIRP	National Inspectorate of the Romanian Police
IICCRNIMRE	Institute for the Investigation of the Crimes of Communism in Romania and the National Institute for the Memory of the Romanian Exile
ACGD	Anti-corruption General Directorate
RIS	Romanian Intelligence Service
MH	Ministry of Health
MND	Ministry of National Defense

Introduction

1. Romania acceded to the Convention against Torture or Other Cruel, Inhuman or Degrading Treatment and Punishment (hereinafter "the Convention") by Law No. 19 from the 9th of October 1990. Moreover, on the 18th of December 2002, the Optional Protocol to the Convention was adopted and ratified by Romania by Law No. 109 from 14th of April 2009.[1]

2. According to the provisions of art. 19 of the Conventional, the first report was submitted on the 14th of February 1992 and reflected the measures adopted in order to fulfill the commitments taken through the Convention, during 17th of January 1991-31st of December 1991. The next reporting period took into account the measures taken after 1991.

I. General information

General legal framework on prohibiting torture and other cruel, inhuman or degrading punishments or acts

3. Following 2007, Romania undertook an extensive legislative reform which ended in adopting four new codes as follows: Civil Code (Law No. 287/2009), Civil Procedure Code (Law No. 134/2010), Criminal Code (Law No. 286/2009) and Criminal Procedure Code (Law no. 135/2010).

4. The basic legislative process of adopting the criminal reform package can be structured as follows:

(1) Adopting the Criminal Code in 2009, by assuming responsibility by the Government;

(2) Adopting the Criminal Procedure Code in 2010, under ordinary parliamentary procedure;

(3) Adopting the law for the implementation of the Criminal Code of for amending and supplementing certain criminal legislative acts;

(4) Adopting the law for the implementation of the Criminal Procedure Code and for the Law on serving the sentences and other custodial sentences ordered by the judicial body during criminal proceedings; for the implementation of the Law on serving the non custodial sentences, educational measures and other measures ordered by the judicial bodies and for the implementation of the Law on the organization and functioning of the probation system.

5. All 7 legislative acts are foreseen to enter into force on the 1st of February 2014.

6. The new Criminal Code (hereinafter, the "NCrC") provides as offence the following: torture (art. 282); subjecting to ill treatment (art. 281); war crimes against persons (art. 440). Moreover, art. 77 let. b) provides as aggravating factor the following act: "b) committing the offence through cruelties or subjecting the victim to degrading treatment".

7. The new Criminal Procedure Code (hereinafter, the "NCrPC") provides at its art. 1 para. 2, the following:

[1] Published in the Official Journal, Part I no.300 from the 7th of May 2009.

"(2) The criminal procedure norms aim at ensuring the efficient exercise of the attributions of the judicial bodies by safeguarding the rights of the parties and the other participants in the criminal proceedings in order to comply with the Constitutional provisions, the European Union primary treaties, of the other EU criminal procedure regulations, as well as of the fundamental human rights pacts and treaties to which Romania is party."

8. Moreover, the principle of respect for human dignity is enshrined as follows: "(1) Any person subject to prosecution or trial shall be treated with respect for human dignity." (art. 11 of the NCrPC)

9. Also, according to art. 9 of the NCrPC, the freedom of the person shall be guaranteed throughout the criminal proceedings:

(1) During criminal proceedings, the right of a person to freedom and safety shall be guaranteed;

(2) Any custodial or freedom restricting measure shall be ordered exceptionally and only in the cases and under the conditions provided for by the law;

(3) Any arrested person has the right to be informed as soon as possible and in a language he/she understands on the grounds of his/her arrest and has the right to challenge the aforementioned measure;

(4) When it is found that a custodial or freedom restricting measure has been illegally ordered, the competent judicial bodies have the obligation to order the revocation of the abovementioned measure and, as the case may be, to set free the confined or arrested person;

(5) Any person against whom a custodial measure was illegally taken during criminal proceedings has the right to recover the prejudice he/she has suffered, under the conditions provided for by the law."

10. As far as the application of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment is concerned, Romania received the last CPT visit in 2010.

11. The prohibition of torture is an absolute right and no derogation shall be allowed. To this end, art. 282 para. 5 of the NCrC explicitly provides:

"No exceptional circumstance, whatever it might be, no matter warfare or war threats, internal political instability or any other exceptional circumstance may be raised in order to justify torture. Moreover, the order of a higher rank within a public authority may neither be raised."

12. Regarding the setting up of the National Mechanism for the Prevention of Torture according to the Optional Protocol to the Convention, the following could be mentioned:

13. The Romanian Ombudsman shall take over the powers of the National Mechanism for the Prevention of Torture. In this context, the Ministry of Justice together with the Romanian Ombudsman drew up the draft of the legislative act to amend Law no. 35/1997 on the organization and functioning of the Romanian Ombudsman. As far as the setting up of the aforementioned mechanism and the beginning of its activity are concerned, Romania shall endeavor to comply with the deadline of August, 2014.

II. Information provided for each article of the Convention

Articles 1 and 4

14. The definition of torture provided at art. 282 of the NCrC was amended as compared to the one in the criminal code in force having regard to the following international instruments:

- Universal Declaration of Human Rights, 1948;
- United Nations Standard Minimum Rules for the Treatment of Prisoners, 1977;
- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984;
- European Convention on Human Rights and Fundamental Freedoms – art. 3;
- Case law of the European Court of Human Rights;
- Council of Europe Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment;
- Recommendations of the Council of Europe Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT);
- Charter of Fundamental Rights of the European Union.

15. The text of the new definition takes, in a more systematized way, the hypothesis of the previous criminal code. As far as the sanctioning system is concerned, the penalty limits were preserved; yet there is one difference between the old regulation and the new one: the elimination of the life detention penalty as an alternative to the hypothesis regulated at para. (3). Such measure aimed at unifying the sanctioning regime applicable in the criminal code to the *praeter – intentionem* offences. The life detention shall only apply for the intentional crimes.

Article 2

16. The implementation of the present article provisions are based on the adoption of the legislative measures required to guarantee the respect of human dignity, freedom and security of the person.

17. Hence, in compliance with the provisions of art. 209 para. 5 of the NCrPC, the prosecutor or the criminal investigation body may take the measure of detention only after hearing the suspect or the defendant in the presence of his/her chosen or ex officio appointed lawyer. The right to be assisted by the lawyer shall be explicitly notified to the suspect or the defendant by the criminal investigation body or the prosecutor. In addition, the detained person shall be entitled to personally notify his/her chosen lawyer.

18. As far as the measure of the preventive arrest is concerned, it is mentioned, at the level of principle, its exceptional and subsidiary character, as compared to the other non-custodial preventive measure. Consequently, the preventive arrest shall be ordered only if taking any other preventive measure is not enough for achieving the legitimate purpose aimed at.

19. Detention, according to art. 209 para. 3 of the NCrPC "shall be ordered for at most 24 hours. Within the term of detention it shall not be included the strictly necessary time for bringing the suspect or defendant to the premises of the judicial body, according to the law".

20. At the same time, according to the provisions of art. 209 para. 15 of the NCrPC:

> "The suspect or the defendant may challenge the ordinance of the prosecutor on detention, before the expiry of its validity, to the first prosecutor of the prosecutor's office, or, as the case may be, to the hierarchically superior prosecutor. The first prosecutor or the hierarchically superior prosecutor shall deliver immediately a decision, through ordinance. In the situation in which he/she finds that the legal provisions on the conditions on taking the detention have been broken, the first prosecutor or the hierarchically superior prosecutor shall order the revocation of such measure and the immediate release of the defendant."

21. The preventive arrest during criminal prosecution according to art. 226 para. 2 in the NCrPC "shall be ordered for at most 30 days. The period of detention shall not be deducted from the period of the preventive arrest". This measure shall be taken by the judge for rights and freedoms.

22. At the same time, art. 238 provides the following:

> "Art. 238 – Preventive arrest of the defendant during the preliminary chamber procedure and during the trial
>
> (1) The preventive arrest of the defendant may be ordered within the preliminary chamber procedure and during the trial, by the preliminary chamber judge or by the court trying the case, ex officio or at the reasoned proposal of the prosecutor, for a period of at most 30 days, for the same grounds and under the same conditions as for the preventive arrest ordered by the judge of rights and freedoms during prosecution stage. The provisions of art. 225, 226 and 228-232 shall be applied accordingly.
>
> (2) During the trial, the measure mentioned at para. (1) may be ordered by the court, namely the panel having the composition provided by the law.
>
> (…)."

23. As for challenging the preventive arrest taken during prosecution, art. 204 in the NCrPC, as amended by the law for the application thereof provides the following:

> "The means of the judicial review of the minutes referring to the preventive measures during prosecution:
>
> (1) The minutes in which the judge for rights and freedoms orders the preventive measures may be challenged by the defendant and the prosecutor through an appeal, within 48 hours since the delivering thereof, or, as the case maybe, since the communication thereof. The appeal shall be filed to the judge for rights and freedoms who has delivered the challenged minutes and it shall be sent, together with the file of the case, to the judge for rights and freedoms from the hierarchically superior court, within 48 hours since the registration of the aforementioned appeal application;
>
> (2) The appeals against the minutes by which the judge of rights and freedoms within the High Court of Cassation and Justice delivers its opinion on the preventive measures shall be dealt with by a panel of judges of rights and freedoms within the High Court of Cassation and Justice. The provisions of the present article shall apply accordingly.
>
> (...)"

24. With respect to challenging the preventive measure ordered during the preliminary chamber procedure, art. 205 of the NCrPC, provides the following:

"(1) The minutes in which the preliminary chamber judge orders the preventive measures may be challenged by the defendant and the prosecutor through an appeal, within 48 hours since the delivering thereof, or, as the case maybe, since the communication thereof. The appeal shall be filed to the preliminary chamber judge who has delivered the challenged minutes and it shall be sent, together with the file of the case, to the preliminary chamber judge from the hierarchically superior court, within 48 hours since the registration of the aforementioned appeal application."

25. Para. (2) of the NCrPC, as amended by the law for the implementation thereof, provides that:

"(2) The appeal against the minutes by which the preliminary chamber judge within the High Court of Cassation and Justice delivers its opinion during the preliminary chamber procedure on the preventive measures shall be dealt with by another panel within the same court, according to the legal provisions.

(...)."

26. As far as the preventive arrest ordered during trial, it should be mentioned that art. 206 of the NCrPC provides the following:

"(1) The minutes in which the judge orders the preventive measures may be challenged by the defendant and the prosecutor through an appeal, within 48 hours since the delivering thereof, or, as the case maybe, since the communication thereof. The appeal shall be filed to the court where the challenged minutes has been delivered and it shall be sent, together with the file of the case, to the superior court, within 48 hours since the registration of the aforementioned appeal application.

(2) The appeal against the minutes by which the High Court of Cassation and Justice delivers its opinion on the preventive measures may be challenged within the competent panel within the High Court of Cassation and Justice.

(...)."

27. Hereinafter, please see the Romanian developments since the latest report. The aforementioned developments shall have regard to the List of issues communicated to the Romanian authorities by the Experts' Committee.

Replies to the issues raised in paragraph 2 (a) of the list of issues (CAT/C/ROM/Q/2)

28. The legal provisions regarding the information of detained or provisionally arrested persons in the detention and arrest centers of the Romanian Police (provided at art. 73 of The Regulation on the implementation of Law No. 275/2006 on serving the sentences and other measures ordered by the court during criminal proceedings, approved by G.D. No. 1897/2006) were amended in 2010. Therefore, to ensure additional guarantees, the legislation imposed to the head of the detention centre or to the person designated by the former to inform the detained or arrested persons, under the latter's signature, on the rules of conduct, the rights and obligations they have, the facilities, incentives and rewards that can be offered, the disciplinary sanctions that may apply, the offences provided by the law, as well as the circumstances when constraint means may be used. [art. 73 paragraph (2)]

29. Regarding the health care provided within the Romanian Police detention centers please see below:

- As far as the Romanian police detention and preventive arrest centers are concerned, the medical care is provided by the doctors within the Medical Department within the Ministry of Internal Affairs (hereinafter, M.I.A);

- The doctors who provide the medical care within the detention and preventive arrest centers are part of another M.I.A. structure – the Medical Department, which has another financial, administrative and professional subordination. The aforementioned doctors are subordinated to the head of the medical unit (medical center and outpatient diagnosis or county medical center which are subordinated to the Medical Department), with the task of reporting on the professional line to the latter, according to his/her job description;

- The doctors are not subordinated to the heads of the police bodies;

- The doctors with the M.I.A. health network are members of the College of Physicians of Romania, in which capacity they are required that, in the exercise of their profession, to respect the legal rights of the attended persons, under the law. The doctors have a medical license stamped on an annual basis by the College of Physicians;

- The legislation stipulates that the doctor performing the medical examination is required to notify the prosecutor if he/she finds that the convicted person has been subjected to torture, inhuman or degrading treatment or other ill-treatment, and to fill in the medical records the findings and statements of the person convicted in connection with this or any other declared aggression. In such cases, the person sentenced to deprivation of liberty has the right to ask to be examined at the detention premises, by a coroner or a physician from outside the M.I.A. health network, designated by the convicted person. The medical findings are recorded in the medical documents of the convicted person and the medical certificate is attached to the medical record after the convicted person has acknowledged its contents and signed it.

30. Detainees can receive medical care from their family doctor, at their request, provided that the physician lives or works in the area where the police detention center is:

- The legal framework on the healthcare services provided within the detention centers of the Romanian Police is represented by the following:

- Law no. 275 of 4th of July 2006 on serving the sentences and other measures ordered by the court during criminal proceedings, art. 51;

- Government Decision no. 1897 of 21st of December 2006 approving the Regulation for the implementation of Law no. 275/2006 serving the sentences and other measures ordered by the court during criminal proceedings, Art. 32;

- M.I.A. Order no. 988/2005 approving the Regulation on organization and operation of detention and detention centers in police units of the M.I.A., art. 60, 61, 62;

- The provisions contained in the M.I.A. Order no. 988/2005 stipulate as follows:

"Art 60. (1) The medical examination is performed respecting the confidentiality principle, periodically and whenever necessary, the results of the medical examination and the findings being mentioned in the medical record of the detainee;

(2) The doctor performing the medical examination is required to notify the prosecutor if he/she finds that the convicted person has been subjected to torture, inhuman or degrading treatment or other ill-treatment, and to fill in the medical records the findings and statements of the person convicted in connection with this or any other declared aggression;

(3) In cases referred to in para. (2), the person sentenced to deprivation of liberty has the right to ask to be examined at the place of detention, by a coroner or a physician from outside the M.I.A. health network, designated by the convicted

person. The medical findings are recorded in the medical documents of the convicted person and the medical certificate is attached to the medical record after the convicted person has acknowledged its contents and signed it.

Article 61

(1) The physician is required to perform on a daily basis the medical examination of the persons placed in the custody of the police who require medical assistance. It is also required to perform periodic medical examination to all persons subject to custodial measures;

(2) The administration of the detention facility shall ensure minimum space and endowment conditions to perform medical examinations or treatments, so that the latter could be conducted in the appropriate privacy environment, without other persons being present;

(3) When performing medical examinations, the doctor shall prescribe the required medication in appropriate dosage. The aforementioned medication shall be given to the detainees, preventive arrested persons or convicted persons only in the presence of the medical staff or the guardian and under supervision, so that such medication should not be stored and than used for a different purpose.

Art. 62

(1) Within the police units, which do not have their own medical staff, the medical assistance shall be provided by a doctor in charge of attending persons from other bodies within the Ministry of Internal Affairs.

(2) If no ministry medical staff is available, the cases of medical emergency shall be dealt with by the nearest medical unit within the Ministry of Health.

(3) The persons under custody may be given medical attendance by their family physician, through the diligence of their family, at the former' own written request on the condition that the physician lives or works in the area where the detention facility is."

Replies to the issues raised in paragraph 2 (b) of the list of issues

31. The Romanian legal aid is granted *lato sensu* both in civil and criminal matters.

32. The civil legal aid is, as a matter of principle, optional. The party may ask to be provided with civil legal aid, or not. The legal aid contract is concluded between the party and his/her chosen lawyer according to the provisions of the Law no. 51/1995 on the organization and exercise of the lawyer profession.

33. Starting with 2008, Romania established a public legal aid system in order to ensure a real access to justice by providing for a good lawyer qualified defense. Such system meets the requirements stipulated in the Council Directive 2002/8/EC of 27 January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes. The Government Emergency Ordinance no. 51/2008 on public legal aid in civil matters provides for the provisions of the aforementioned system.

34. The principles are as follows:

(1) The public legal aid is to be regarded as a support measure granted by the state to those persons who are or are to become parties in a dispute pending on a Romanian court or on other Romanian jurisdictional authorities. Such a measure is to be considered as a means to allow to all persons a real access to justice. The public legal aid relies on the idea that under no circumstances should the costs of a judicial procedure be an obstacle in trying to

have access to the justice system in order to have a right recognized or in order to defended it. The real access to justice – an expression of the democratic principles of the rule of law and the supremacy of law – shows a public interest. Such interest accounts for state support, under certain conditions and within certain limits out of public funds;

(2) The support is granted, as a matter of principle, to those persons with financial difficulties and only under the following circumstances: either the exact or foreseeable judicial expenses would affect the maintenance of the applicant or of the persons under his/her care or it would make access to justice impossible or illusory.

35. The financial condition is deemed for each applicant having regard to: his/her source of income, the sources of income of his/her family members as well as to their periodical financial obligations. The law provides for two presumptions of a financial difficulty condition that should require granting public aid:

- The income is below 500 lei (approx. 120 euros)/person;
- The income is between 500 lei and 800 lei (approx. 120-200 euros)/person.

36. According to the above mentioned criteria, the public legal aid is granted totally or partially. The aforementioned thresholds were amended by Law no. 251/2011. The same law lowered the maximum threshold in granting public legal aid from 12 minimum gross monthly salaries to 10 such salaries.

37. Besides the two aforementioned presumptions, the law also provides for keeping a flexible criterion, which is left to the appreciation of the judge. This is to be applied to those cases in which, although there is no circumstance of "precarious financial condition", yet there is a justification for supporting the judicial formalities. (In the case Weissman vs Romania, the European Court of Human Rights held that extreme high level of the stamp tax hindered the respective person's access to justice).

(3) The public legal aid shall not constitute a means of encouraging the abuse of a procedural right. The present institution shall only be made use of for legitimate purpose, being such purpose justified in front of the jurisdictional authority, even more since it benefits from public funds. Trying to abuse such a measure should be avoided while an extrajudicial settlement should be encouraged. To this end and in compliance with the provisions of Directive (CE) 8/2003:

(a) The law stipulates the circumstances when the public legal aid can be denied: when its cost is disproportioned in comparison to the object of the case, when the application for the public legal aid is not justified by a legitimate interest or the object of the application infringes public or constitutional order.

Moreover, if the application for public legal aid can be subject to mediation or any other alternative dispute resolution, the application for the public legal aid can be denied if it is proven that the applicant previously refused the use of such mediation procedure.

There is another legal provision denying the public legal aid, by making use of a Directive provision: if the applicant claims damages because his/her image, honor or reputation was affected (non financial damages) but he/she did not suffer any material damage.

In order to make the applicant more accountable for his/her behavior, the law also provides for the possibility of the court to oblige the applicant for the public legal aid to return the amount of money if: his/her lack of diligence during trial triggered delays or he/she lost the trial, or if by final court decision it was found that the applicant's action was the result of an abuse of a procedural right;

(b) The public legal aid is based on the interest on the applicant's part by supporting, in part, his/her own expenses but also paying for the trial expenses, when the applicant lost the trial;

(c) Mediation is encouraged as a means of resolving disputes by: on the one hand, the possibility to deny public legal aid to the applicant if the latter previously refused to provide for a feed back to the mediation procedure and, on the other hand, the possibility to reimburse the fee of the mediator if, before the initiation of the trial, or, at least until the first hearing term, the party applied for a mediation procedure.

(4) As far as the competence and the procedure for granting public legal aid are concerned, the court shall decide, after hearing the relevant evidence, on the granting of public legal aid and the types thereof.

38. The law also provides for a sanction system. As a rule, the sanctions consist of returning the public legal aid money but also of fines: for a bad faith application for public legal aid, for presenting false information on the economic condition of the applicant; for non diligent behavior during trial which triggered either loosing the trial or delaying the solving of the case; for abuse of procedural right.

(5) Types of public legal aid:

(a) Lawyer counselling;

(b) Payment of fees for experts, translators or interpreters used during the trial, with the authorization of the court or of the jurisdictional authority, if such payment is incumbent to the applicant;

(c) Payment of fees for bailiffs;

(d) Exemptions, reductions, rescheduling or delays with respect to judicial taxes provided by law, including with respect to the taxes owed during the coercive enforcement stage.

39. The lawyer counseling is allowed as a supplementary requirement besides the general ones, only if deemed as indispensable in relation to the complexity of the case and to the educational background of the applicant. The lawyers shall be appointed by the dean of the Barr Association among a list drawn up on an annual basis, having regard to the lawyers' options.

(6) The law also provides for an extrajudicial aid. Such aid refers to counseling, filling in applications, petitions, notifications, initiation of other similar legal procedures in front of public authorities or institutions, other than the judicial ones or which have jurisdictional competences. Bearing the cost of the mediator's fee shall also be regarded as a type of extrajudicial aid.

(7) Since the Directive (EC) 2003/8 is already transposed into domestic legislation, not only the Romanian citizens can benefit from its provisions, but also any other citizen of a EU member state, as well as any person having his/her domicile or permanent residence on the territory of any of the member states.

40. For this special circumstance, as well as for the cases of the Romanian citizens or citizens of any EU member state, having their domicile or permanent residence in Romania, when the legal aid is asked in another member state, there are special applicable jurisdiction and procedural rules. Such rules refer especially to the way of submitting and receiving the applications, to the assistance offered by the respective state in order to carry out such procedures, as well as to cover, by the respective state, the costs generated by the cross-border nature of the dispute (translations).

(8) The public legal aid is financed from the state budget.

(9) The Ministry of Justice shall coordinate and exercise the control of the public legal aid, as it administrates the budget resources financing the justice system. Being the Ministry of Justice administrator, it shall have specific attributions referred to general coordination and control.

41. The New civil procedure code (Law no. 134/2010) stipulated the obligation of a lawyer counseling in the second appeal stage – drawing up the second appeal claim, exercising and defending the second appeal. Such a rule meets the new vision of the second appeal, having regard to the specificity of this extraordinary legal remedy, reflected in the requirements for the exercising thereof, the procedure as well as the grounds. The second appeal shall be limited to the legality review.

(a) The legal aid in criminal matters

(i) Right to defense

42. According to the criminal procedure code, any accused or defendant shall be entitled to lawyer counseling during the criminal prosecution or trail stage and the judicial bodies shall inform him/her on this right.

(ii) Mandatory legal aid

43. There are certain circumstances that require mandatory legal aid. Such situations are as follows: the accused or defendant is a minor, he/she is placed in a correctional center or in an educational medical institute; he/she is detained or arrested in another case; he/she was the object of the safety measure of being placed in a medical institution or obliged to undertake medical treatment even with respect to another case; any other cases when the criminal prosecution body or the court deems that the accused/defendant would be unable to defend himself/herself.

44. During the trial, the legal aid shall also be mandatory with respect to the cases for which the law provides for a penalty of life imprisonment or at least 5-year imprisonment.

45. For the abovementioned situations, if the accused/defendant was unable to find a defender, measures shall be taken for the appointment thereof.

46. If the accused or the defendant cannot afford a defender, the judicial bodies can also appoint one.

47. The Barr Association shall appoint the public defender, according to the legal provisions.

48. The lawyer shall provide for legal counseling for those cases which he/she had been appointed for.

(iii) Defender's rights

49. During the criminal prosecution, the defender shall be entitled to be present to any criminal prosecution acts and to file any applications, claims or memoires deemed to be necessary.

(iv) The new criminal procedure code (Law nr. 135/2010)

50. The new criminal procedure code provides for the right of the detained or arrested person to contact his/her lawyer, to be provided with proper conditions to ensure confidentiality of the discussions, calls or mail.

51. Also, in compliance with the right to defense principle, the defender shall be entitled to look into the client's file any time during the criminal prosecution stage. The content of

the aforementioned right is also regulated in the law and includes the right to study the file and to right down any data or information.

52. Moreover, the circumstances the prosecutor shall be entitled to restrict the exercise of such right are also established.

53. With respect to the right of the lawyer to be present during any criminal prosecution acts, the present regulation has been preserved. The exceptions from exercising such right are clearly stipulated and refer to the situations when: special investigation or surveillance techniques are used, IT, body or vehicle search is conducted, in case of flagrante delicto and when the presence of the lawyer would affect the right to defense for the rest of the parties or of the persons having legal standing in the trial. As far as the latest case is concerned, the criminal prosecution body shall ask the lawyer's questions.

54. As for the right of the lawyer to file a complaint, the law provides for the possibility of challenging the prosecutor's solution to his/her superior if the lawyer deems that his/her rights have not been respected during the criminal prosecution stage.

Replies to the issues raised in paragraph 2 (c) of the list of issues

55. The disciplinary sanction named isolation for a maximum of 10 days is provided by art. 71 paragraph (1) letter f) of Law no. 275/2006 and applies to the detained or arrested persons under the following circumstances:

- If they commit very serious disciplinary offences or
- If they repeatedly commit serious disciplinary offences;
- If they show obvious aggressive attitude or violence;
- If they seriously affect the regular environment in the detention centre or its safety.

56. The aforementioned disciplinary sanction cannot be applied to children and pregnant women or to those who have the custody of children under the age of one.

57. The application of the disciplinary sanction cannot restrict the right to defense, the right to file a petition, the right to correspondence, the right to healthcare, the right to food, the right to light and the right to daily walk.

58. The disciplinary sanction may only be applied with the approval of the doctor. The doctor's visits must take place daily and whenever necessary for the arrested persons executing this disciplinary sanction.

Replies to the issues raised in paragraph 3 of the list of issues

59. The length of the period of detention and provisional arrest during the criminal prosecution is set by the Romanian Constitution (Article 23) and by the CrPC. Hence, according to art. 23 para. (3) of the Romanian Constitution, detention must not exceed 24 hours, while art. 23 para. (5) establishes that during criminal prosecution the provisional arrest can be ordered for up to 30 days and may be extended by a maximum of 30 days each, but the total duration shall not exceed a reasonable time and shall not be more than 180 days.

60. According to art. 136 of the CrPC, preventive measures that can be ordered by the judicial authorities during the criminal proceedings are as follows: detention, order not to leave the city, order not to leave the country and preventive arrest. Of the four previously mentioned preventive measures only two are custodial preventive measures, namely: detention and preventive arrest.

61. The preventive measure of detention can be ordered for a period of maximum of 24 hours and in exceptional cases the detention measure may also be ordered against children aged between 14-16, but for a period that must not exceed 10 hours.

62. The preventive arrest of the defendant may be ordered for a period not exceeding 30 days, which may be successively extended during criminal prosecution to a maximum of 180 days.

63. The preventive arrest of the defendant aged 14 to 16 years, during the prosecution, may be ordered for a period not exceeding 15 days and may be successively extended up to a maximum of 60 days.

64. The preventive arrest of the child defendant aged over 16, during the criminal prosecution, may be ordered for a period not exceeding 20 days and may be successively extended up to a maximum of 90 days. Exceptionally, the preventive arrest of the child defendant may be extended during the criminal prosecution up to 180 days.

65. Currently, the alternatives to custodial preventive measures are represented by the preventive measures of ordering not to leave the town or the country. In the future CrPC, the house arrest shall be provided as an alternative to the preventive arrest.

Replies to the issues raised in paragraph 4 of the list of issues

66. Within the Romanian Police, the Service for Coordination of Detention and Preventive Arrest Centers is constituted, as a special structure to this end, which has the main purpose to monitor and check the way the rights of inmates are respected as well as the detention conditions are complied with, taking into account the recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment made during the regular visits to Romania. For this purpose:

- Different indicators at national level are tabulated monthly and quarterly;
- Specific analyses are made.

67. Regarding the effective monitoring of the public custody centers subordinated to the GII, this is achieved by two specific ways:

(1) The control performed by the civil society – it is achieved by allowing the access of representatives of international organizations (UNHCR – Representation of Romania and IOM) and those of non-governmental organizations (JRS Romania and NRRC) with which the GII has signed protocols or partnerships for the development of EU funded projects;

(2) Internal Control – achieved by installation of video surveillance in the public custody centers and by making operational the commission on human rights appointed at the level of the Institution, in those cases where abuses by institution's own staff are claimed.

68. Concerning the respect of the rights provided for in the law for the enforcement of custodial sentences, the former is dealt with by the delegated judge for the execution of custodial sentences.

69. The representatives of non-governmental organizations which carry out activities in the field of human rights protection can visit prisons and may come into contact with persons serving custodial sentences, with the consent of the Director-general of the National Administration of Penitentiaries. The meetings between the representatives of

non-governmental organizations and the persons serving sentences involving deprivation of liberty is carried out under conditions of confidentiality and under visual supervision.[2]

70. To ensure the proper organization and functioning of every place of detention under the National Administration of Penitentiaries, such places are subject to routine, occasional, unannounced, thematic and specialized inspections and checks. This is done either ex officio or on the basis of intimations or complaints and evaluates, verifies, and controls the following:

- The implementation of the legal provisions and internal rules;
- The application of the system of execution of sentences and preventive measures, education and psycho-social intervention;
- The respect for the rights of persons deprived of liberty;
- The respect for the rights of persons belonging to vulnerable groups;
- The use of human, material and financial resources;
- How safety and security are provided;
- The prevention of irregularities, abuses and situations of risk, as well as other matters concerning the organization and functioning of places of detention.

71. The inspections and controls are carried out by the members of the inspection Body of the Minister of Justice or other person designated by the latter, by inspectors or designated persons within the National Administration of Penitentiaries (hereinafter, the N.A.P.), as well as by the delegated judge for the execution of custodial sentences.

72. The work done by the penitentiary probation services is assessed and inspected by the probation supervisors within the Probation Department of the Ministry of Justice, the Control Body of the Minister of Justice or by other persons designated by the latter.

73. The findings, conclusions, recommendations and final evaluations are the subject of reports that are submitted to the Minister of Justice, the Director-general of the N.A.P. and to the supervised personnel. They can be made public, with the approval of the respective authority, the Director General of the N.A.P. and the Minister of Justice. The provisions of law No. 182/2002 concerning the protection of classified information, as amended, shall apply accordingly.

74. Other authorities or State institutions may carry out inspections and checks in the places of detention, according to their respective powers, according to the laws of their own organization and operation.[3]

Replies to the issues raised in paragraph 5 of the list of issues

75. The places of detention under the N.A.P. are subject to routine, occasional, unannounced, thematic and specialized inspections and checks. This is done either ex officio or on the basis of intimations or complaints and evaluates, verifies, and controls the implementation of legal provisions and internal rules, the application of the prison regime and preventive measures for the protection of the rights of persons deprived of liberty, and respect for the rights belonging to vulnerable groups, the prevention of irregularities, abuses and situations of risk, as well as other matters concerning the organization and functioning of detention places.

[2] Art. 39 Law no. 275/2006.

[3] Art. 15 of the Regulation to enforce the Law no.275/2006.

76. The Prison Inspection Directorate is a specialized structure to operatively inform the Director-general of the N.A.P. with regard to law and criminal enforcement legislation and progress of specific prison problems in all its subordinated units, and in the exercise of its powers it can perform unannounced and thematic inspections and checks. These are performed from the order of the Director-general of the N.A.P., upon request of the heads of divisions, departments, offices and departments of the N.A.P. or on its own initiative, on the basis of its planning, referrals or other forms of information and communication.

77. It also informs the Control Body of the Minister of Justice in connection with the outcome of the inspections and all types of controls as well as on the implementation of the measures laid out in the inspections ordered by the Control Body of the Minister of Justice.

78. It should be mentioned that the exercising of control attributions by the Inspection Directorate shall not exclude the right of the Control Body of the Minister of Justice to exercise its own powers within the N.A.P. or its subordinated units, in accordance with the legal provisions.

79. In exercising its powers of control, the Inspection Directorate has unrestricted access, under the law, to the documents, information and data needed, both at the level of divisions, departments, offices and departments of the N.A.P., as well as at the level of its subordinated units.

80. Also, there are other specialized Directorates that have tasks of coordination, guidance and control, in their field of activity.

81. According to the provisions of art. 6 of Law no. 275/2006, the serving of the sentences is performed under the supervision, control and authority of the delegated judge, appointed thereto by the president of the court of appeal within which jurisdiction the respective penitentiary is. The Public Ministry has no attributions in the field.

Replies to the issues raised in paragraph 6 of the list of issues

82. According to the provisions of art. 58-60 of the Romanian Constitution and of art. 1 para. (1) of Law no. 35/1997 on the organization and operation of the Romanian Ombudsman, republished, with further amendments and supplements, the Romanian Ombudsman shall defend the rights and freedoms of natural persons in the latter's relationships with public authorities.

83. In order to achieve its legal and Constitutional goal, the Romanian Ombudsman shall receive, examine and solve, in compliance with the legal provisions, the petitions lodged by any natural person, irrespective of his/her citizenship, age, gender, political or religious beliefs. The petitions lodged within the Romanian Ombudsman shall be submitted in writing, in compliance with the requirements prescribed by the law and can be sent by mail, including electronic mail, fax, or directly through the public relations office, which is the main means of dialogue with the citizens. Also, the Romanian Ombudsman shall exercise its powers ex officio when it finds out, by any means, that rights or freedoms of natural persons have been breached.

84. The persons deprived of their liberty (sentenced, detained, arrested or committed in re-educational centers, in case of minors), may address the Romanian Ombudsman without any restriction. To this end, according to the provisions of art. 17 para. (1) of Law no. 35/1997 on the organization and operation of the Romanian Ombudsman, republished, with further amendments and supplements, the following should be mentioned: "The management staff of the penitentiaries, the re-educational centers for minors, the penitentiary-hospitals as well as the Public Ministry and the police bodies shall allow, with no restriction whatsoever, the persons serving a custodial sentence, or, as the case may be, the arrested or detained persons, as well as the minors in the re-educational centers to

address themselves, in any way, the Romanian Ombudsman with respect to their breach of rights or liberties, with the exception of the legal restraints."

85. The Romanian Ombudsman has a specialized field of activity which refers to: army, justice, police and penitentiaries matters. The aforementioned department is headed by a deputy of the Romanian Ombudsman who deals with solving the petitions filed by the persons placed in custody.

86. In order to solve the petitions filed by the persons deprived of their liberty, the Romanian Ombudsman relies on the following means of intervention: asking for information from the respective public authorities or from their superior bodies; conducting investigations; issuing recommendations, if breaching the rights of the persons deprived of liberty is found; drawing up reports to be submitted to Parliament. In this context, it should be mentioned that the Ombudsman reports may contain recommendations on amending the existing legislation or any other measures to protect the rights and freedoms of the persons deprived of liberty.

87. Some of the intervention means mentioned above (asking for information, conducting investigations, drawing up special reports submitted to Parliament) have been used during the activity carried out by the Romanian Ombudsman. For instance, such methods have been used in solving the petitions in which the persons deprived of their liberty, alleging being subject to inhuman or degrading treatments, have complained about the detention conditions, the medical treatment which did not respond to their diagnosed illness and the regimes of food they were given according to their illness. All the aforementioned should be provided to the persons serving a custodial sentence in compliance with the respect for human dignity and by taking adequate methods of serving the sentence. Such methods should ensure that the detained persons should not be subject to humiliating treatment or conditions which would exceed the unavoidable level of detention inherent sufferance and which, bearing in mind detention practical requirements, should still ensure acceptable standard of life and health conditions.

88. In addition, in its annual reports which are submitted to Parliament, the Romanian Ombudsman also provides for information on the intimations filed by the persons serving a custodial sentence.

89. Also, the special Report on serving the sentences in the penitentiaries could be regarded as an example. The aforementioned report was drawn up in 2003 by the Romanian Ombudsman based on the petitions filed by the persons serving a custodial sentence and submitted to the Chamber of Deputies, the Senate, the Romanian Prime Minister and the former General Directorate of Penitentiaries (now, The National Administration of Penitentiaries). The abovementioned special Report, having regard to the outdated provisions of Law no. 23/1969 on serving the sentences, in force at that date, proposed the enactment of a new law on sentence serving. Such law should have regard to international and constitutional provisions in the field, which should ensure the protection of human dignity, prohibition of torture or any other cruel, inhuman or degrading treatments or punishments and the adoption of an implementation Regulation to the law. Such regulation should meet the requirements of accessibility, by publishing it in the Romanian Official Journal. The Ombudsman proposals supported the drafting of a new piece of legislation in the field, which prohibited subjecting any person serving a sentence to torture, inhuman, degrading or ill treatments.

90. It should be mentioned that according to the Romanian criminal law, subjecting a person to torture, inhuman, degrading or ill treatments is a criminal offence.

91. Consequently, in cases of torture or inhuman or degrading treatments, the jurisdiction to solve the cases rests with the prosecutor (The Public Ministry). In this context, the provisions of art. 65 para. (1) of the CrPC should be mentioned. According to

the latter, the duty to submit the evidence in the criminal proceedings rests with the prosecution and the court. Therefore, the Public Ministry, through its prosecutors, shall have the duty during prosecution stage to search for, submit and assess the evidence determining the existence or not of the respective offence, identifying the perpetrator and establishing all the circumstances for the fair solving of the case. During the trial stage, the court shall be the one to decide whether the evidence proposed by the parties is conclusive and useful to the case.

92. If the Romanian Ombudsman finds that the petitions it receives on breaching the right to life or bodily or psychological integrity fall within the jurisdiction of a certain court, such petitions can be submitted, as the case may be, to the minister of justice, Superior Council of Magistracy, Public Ministry or the president of the respective court, by applying the provisions of art. 18 of Law no. 35/1997, republished, with further amendments and supplements.

93. Hence, with respect to the offences of torture or inhuman and cruel treatments, according to the in force regulations, the Romanian Ombudsman may intervene, when notified by natural persons or following an ex officio action, and if it finds that the law has been broken in the case of the persons serving a custodial sentence, may notify the competent bodies to find the respective irregularities.

Replies to the issues raised in paragraph 7 (a) of the list of issues

94. The legislative framework in the field of fighting trafficking in human beings, both at national and international levels, is as follows:

(1) International Conventions and Protocols ratified by Romania:

- United Nations Convention against Transnational Organized Crime (2000) and the two protocols thereto, ratified by Law No. 565/2002;
- Council of Europe Convention on Action against Trafficking in Human Beings, ratified by Law No. 300/2006;
- Convention on the Rights of the Child ratified by Law No. 18/1990;
- International Labour Organization Convention No. 182 (1999) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, ratified by Law 203/2000;
- Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography ratified by Law No. 470/2001.

(2) National law:

- Law No. 678/2001 on preventing and combating trafficking in human beings, as amended and Government Decision no. 299/2003 to approve Standard Rules for Application of the abovementioned law;
- Law No. 272/2004 protecting and promoting the rights of the child;
- Law No. 39/2003 on preventing and combating organized crime;
- Government Decision No. 1654/2006 approving the National Strategy against trafficking in human beings 2006 – 2010 and Government Decision No. 1720/2006 approving the Action Plan for the implementation of the abovementioned strategy;
- Government Decision No. 1238/2007 approving the specific National Standards for Specialized Assistance Services provided to trafficking victims;

- Government Decision No. 1443/2004 regarding the methodology of returning unaccompanied Romanian children outside the country and measures to ensure their special protection;
- Government Decision No. 1295/2004 approving the national Action Plan on preventing and combating trafficking of children;
- Government Decision No. 1769/2004 approving the national Action Plan on eliminating child labor exploitation;
- Government Decision No. 1504/2004 approving the national Action Plan on preventing and combating child sexual abuse and commercial sexual exploitation of children;
- Government Decision No. 1142/2012 on approving the National Strategy against trafficking in human beings for 2012–2016 and of the National action plan for 2012-2014 for the implementation of the aforementioned strategy;
- Government Decision no. 49/2011 approving the Framework Methodology on prevention and multidisciplinary team and network intervention in cases of violence against children and domestic violence and of the Inter-disciplinary and Inter-institutional intervention Methodology on children exploited or at risk of labor exploitation, child victims of trafficking and migrant Romanian children, victims of other forms of violence on the territory of other states;
- Government Decision No. 967/2010 on the amendment and supplement of G.D. No. 1434/2004 regarding the duties and framework organization and functioning of the Directorates of Social Assistance and Child Protection by means of which a special department is set up within each general directorate of social assistance and child protection in order to deal with the cases of interventions in circumstances of abuse, neglect, trafficking, migrations and repatriations;
- Law No. 292 of 20 December 2011 on social assistance, which includes specific provisions on the system of benefits and social services, and their beneficiaries, including children at risk, child victims of all forms of violence and adult victims of trafficking, measures to prevent and combat the risk of poverty and social exclusion, child and family welfare, assistance of people with disabilities and elderly, institution building of national social assistance system, from the central level to the county level and to communities level and local level, and its funding;
- Government Decision no. 10/2013 that provides the organization and functioning of The Ministry of Labor, Family, Social Protection and Elderly – institutional reform;
- Government Decision no. 1156/2012 approving the National Strategy on preventing and fighting domestic violence for 2013-2017 and its Operational plan for the implementation thereof. The measures envisage the protection of the child against any risk of violence, in particular, all forms of abuse, neglect, exploitation and child trafficking.

95. Law No. 678/2001 on preventing and fighting trafficking in human beings is the main legislative act in the field. The aforementioned law provides for prevention and fighting measures, sanctions, protection, support and assistance to the victims of trafficking. The main provisions refer to the following issues:

- A clear definition of the trafficking in humans beings offence;
- A list of the authorities in charge with the prevention of such phenomenon and the attributions thereof;
- A list of the offences and sanctions thereof;

- Ways of protecting and assisting the victims;
- International cooperation mechanisms.

96. From 2008 till now the THB prevention campaigns implemented in Romania have had solid foundation resulting from research and studies in the field, as well from statistical data on target groups and especially risk areas, documents performed on scientific indicators and sociological both by the National Agency against Trafficking in Persons (hereinafter, the NAATIP) but also by the other national or international bodies or organizations.

97. The national prevention campaigns covered the necessity of the population and media to be informed, the message being focused on the risks of trafficking for sexual exploitation, labor exploitation and forced into begging. Local prevention campaigns in which were actively involved also institutional partners have been adapted according to the local and regional specificity of human trafficking.

98. In our country, between 2008 and 2012 there were a total of 68 campaigns to prevent trafficking organized and implemented at both levels, national and local. Within these campaigns, about 4.350.000 persons have benefited from the information and materials created, most of them women, teens and children.

99. Also, by Government Decision no. 1142/2012, the National Strategy against Trafficking in Human Beings for 2012 – 2016 and the National Action Plan for 2012 – 2014, were approved afterwards. These are programmatic documents which comply with EU priorities in the field of preventing and combating trafficking in persons, as set out in the Stockholm Program, Internal Security Strategy, as well in recent EU Strategy for the elimination of trafficking. It involved the participation of all relevant central authorities and civil society organizations in developing the National Strategy but mainly alignment of this programmatic document to EU policies.

100. The strategy objective aims at four main action lines, respectively: a) prevention; b) protection, assistance and social reintegration of the victims; c) fighting trafficking in human beings and trafficking in minors; d) international and inter-institutional cooperation.

101. The aforementioned activities aim at the following: to boost the preventive activities and civil society participation in their implementation, improving the quality of the protection and assistance to the victims of trafficking in human beings for their social reintegration, improving institutional capacity to investigate trafficking offenses, mainly child trafficking, as well as the pursuit of the profit by the criminal prosecution bodies, increasing capacity to collect and analyze data on trafficking, optimization and expansion of institutional cooperation to support implementation of the national strategy against trafficking. The objectives are achieved through concrete activities undertaken by both the Ministry of Internal Affairs, as well as by other ministries and NGOs, according with the National Action Plan 2012 – 2014. Hence, these documents aim at a strategic development and implementation of the prevention campaigns, at the risk groups identified, providing information to professional categories among service providers who may come into contact with victims (public notaries, persons transporters, hotel staff, etc.), increase participation of media to support and promote messages to inform the public about trafficking.

102. With regard to minors as victims of trafficking, they benefit according with Romanian legislation from specific protective measures, in accordance with the regulations of the national system of protection and promotion of children's rights. The National Action Plan 2012 – 2014 aim is to increase the number of children who benefit from the services available through the procedure of case management for child victims of trafficking in children. Also, in order to reduce the demand for trafficked persons the same policy document provides for measures to monitor economic activity in professional fields

with high labor turnover (construction, agriculture, wood exploitation, tourism, etc.). Reducing demand is addressed also by developing prevention campaigns that consider discouraging demand covering all types of exploitation. The most important activities involving the M.I.A. aimed at both women and minors victims of trafficking, include improving early identification and referral of victims to service providers to standardize risk assessments, standardization of assisted repatriation, amendment of the National Mechanism for Identification and Referral of trafficked persons in accordance with the new standards and the training of specialists involved in the implementation mechanism regarding the changes.

103. The activities developed in the area of combating human trafficking have resulted in the data from Table no.4 provided in the Annex to the present report.

Replies to the issues raised in paragraph 7 (b) of the list of issues

104. In order to carry out the national and local campaigns to prevent trafficking, the funding was as follows: funds from the M.I.A. budget, from budgets of EU-funded projects and budgets obtained by NGOs through sponsorship.

Replies to the issues raised in paragraph 7 (c) of the list of issues

105. At national level, the NAATIP succeeded since 2008 to implement the National Integrated System for Monitoring and Evaluation of trafficking in persons victims (hereinafter, the SIMEV) which represents for all persons involved an important tool in assessing the needs of victims and their immediate referral to specialist support services, immediately after their identification, monitoring of assistance provided to victims and progress towards their social reintegration as well as evaluating the phenomenon, identify trends and making them available to those interested. For statistical data, please see Table no.1.

106. As for the statistical information regarding the activity of the Public Ministry and of the courts, please see the Annex.

Replies to the issues raised in paragraph 7 (d) of the list of issues

107. In 2012, a Schengen training course was organized on combating human trafficking. The target group was represented by:

- The Romanian Police: staff within the organized crime structures at central and local levels;
- The Border Police: all staff with control attributions at the border crossing points and the operative workers from central and local levels with competencies to prevent and combat illegal migration and cross-border crime.

108. The course objectives were: to identify the vulnerability factors and the risk of victimization for trafficking in human beings; to develop data collection skills of interest in human trafficking; to understand the National Identification and Referral Mechanism, implementation of the Schengen acquis relevant to the issue of trafficking in human beings.

109. Also, during the interested period, training activities were carried out in the field of human trafficking, for example:

- With the support of the European TAIEX Office the seminar on "Fight against illegal migration and trafficking in human beings in the Schengen context" was organized in Bucharest, February 23-24, 2009, at which 50 participants of the Police and the Border Police attended;

- Eight police officers attended a training seminar on trafficking in persons, organized by EU Member States under the aegis of the European Police College (CEPOL).

110. Moreover, under the umbrella of the Commission project Euromed Police two training activities in the field of human trafficking were organized in Romania, in Bucharest, involving 60 police officers with responsibilities in this area. (October 2010 and November 2012).

111. The Multifunctional Schengen Training Center organized since 2011, seven courses on human trafficking, for example:

(1) Combating human trafficking Cooperation in preventing and combating illegal migration Southeast Europe Organized Crime Organization OCTA related;

(2) Schengen interest aspects in international cooperation on combating human trafficking;

(3) Border control, visas, migration and asylum;

(4) Preventing and combating cross-border crime;

(5) Combating drugs, illegal migration and human trafficking in the Western Balkans.

112. During 2012, 5-day courses in the field of combating human trafficking and combating illegal migration were organized at the Centre for Police Training and Professional Development "Nicolae Golescu" Slatina. The courses involved the participation of 38 officers and 5 police agents working in the fight against organized crime brigades and police territorial units.

113. The "Al. I. Cuza" Police Academy within the University of Bucharest has been preparing on an annual basis, during 2008-2013, future police officers on matters relating to combating trafficking in persons and human organs through the Police Department according to its specialized curriculum.

114. As far as the activity of the Ministry of Labor, Family, Social Protection and Elderly (hereinafter, the MLFSPE), a national program was implemented during January 2011 – July 2012, funded from EU funds named "Strengthening the Ministry of Labor, Family, Social Protection and Elderly capacity to ensure the coordination of the UN Convention on the Rights of the Child in Romania". The aim was to support the Romanian authorities in order to implement the recommendations made to the state party on the occasion of the last country report examination in 2009 with respect to the implementation of the aforementioned Convention.

115. One of the recommendations made to Romania by the UN Committee referred to the continuation of the efforts made in order to ensure "the training of all the professional categories that work with and for the children, especially those who are enforcing the law, the teachers, medical staff, social workers, staff working within the child protection institutions and media (…)".

116. In this regard, within the context of the program, more than 38 training sessions were organized at national level, whose main target was represented by professionals from different sectors of activity who are also dealing with children rights issues, such as: justice, police, social assistance, public administration, etc.

117. Part of the topics approached within the training sessions referred also to the trafficking in human beings and helped the specialists participating to these training sessions to better approach and deal with cases of children or persons subject to trafficking in human beings.

118. According to its competencies MLFSPE ensured the training of the specialists working within the child protection authorities at local level on various topics regarding the services that could be provided to the victims referred to them, and the ways in which they could cooperate with other competent institutions in order to offer adequate services and protection to the victims.

Replies to the issues raised in paragraph 8 (a) of the list of issues

(a) Legislative framework in the field

119. The criminal code in force provides as criminal offences the deeds of hitting and injuring the bodily integrity of one's family members [1]:

- Hitting or any other violent actions causing physical sufferance to one's family members [art. 180 para. (1) and (11)];
- Hitting or other violent actions which have caused a bodily harm requesting medical care of maximum 20 days, perpetrated against one's family members [art. 180 para. (2) and (21)];
- Bodily harm – the deed which has harmed the bodily integrity or the health of a person, requesting medical care of maximum 60 days, perpetrated against one's family members [art. 181 para. (11)];
- Serious bodily harm – the deed which has harmed the bodily integrity or the health of a person, requesting medical care of more than 60 days, or which has resulted into one of the following consequences: lost of a sense or an organ, the ceasing of their functioning, a permanent physical or psychic infirmity, disfigurement, abortion [art. 182].

120. Committing the offence by the use of violence against family members shall be considered as aggravating factor according to art. 75 let. b) of the CrC.

121. Art. 112 of the CrC, provides as a safety measure, the prohibition to return to the family home for a determined period of time [let. g)]. According to the provisions of art. 1181 of the CrC, when a person was sentenced to at least 1-year-imprisonment for heating or any other violent acts resulting in bodily or psychological injury, committed against family members, if the court finds that the respective person's presence in the home poses a real danger to the other family members, may order the former not to return to the home, if the injured party so requests. The aforementioned measure may be taken for a period of 2 years at most.

122. As far as the domestic violence prevention and fighting is concerned, the provisions of Law no.217/2003[4] shall apply. The law provides for the institutions with attributions in the field, their duties, sources of financing the prevention and fight activity, sanctions etc. The protection order is to be regarded as a novelty in this field (Chap. IV). Hence, based on the evidence submitted in the case, the court may order one of the following measures (examples):

- Evacuation of the aggressor from the family home,
- Reintegration of the victim and his/her children into the family home,
- Limitation of the right to use the family home by the aggressor, when the construction allows to be divided and used separately by both parties;

[4] On preventing and fighting domestic violence.

- Forbidding the aggressor to visit some places or determined areas where also the victim might go;
- Obligating the aggressor to keep a certain distance from the victim or the victim's home, his/her children, relatives, home or education facility.

123. Besides such measures, the court may also decide to send the aggressor to follow psychological counseling, control or treatment.

(b) Measures for prevention of child victimization

124. During 2008:

- 850 police-training units action plans were implemented nationwide that addressed student safety in schools;
- 4 projects and 3 action plans were set up to prevent begging among children.

125. During 2009:

- 42 programs were implemented nationwide that addressed the prevention of child victimization;
- The national campaign was developed to raise awareness of the hazards posed by the internet for children "Youth Safety on the Internet" undertaken with Microsoft Romania and the Ministry of Education, Focus Centre and "Save the Children" Organization.

126. During 2010:

- 42 programs were implemented nationwide that addressed the prevention of child victimization;
- The campaign to prevent child victimization "When I cannot talk…" was organized in collaboration with the Child Helpline Association and was held nationally in November;
- The paper "Preventing child labor exploitation" was drafted in order to improve the training of police officers.

127. During 2011:

- 42 programs were implemented nationwide that addressed the prevention of child victimization;
- "WHO IS YOUR INTERNET FRIEND?", component of the project initiated by the Romanian Police and the Norwegian police "Developing the capacity for preventing and investigating cases of child pornography on the Internet", were funded by EEA Grants Mechanism.

128. Developed from February to December 2011, the national campaign had two components: a media component, namely to broadcast TV, radio and the TV ads, online distribution of information, including social networks and a preventive intervention component, carried out by the police officers responsible for the analysis and prevention of crime in all counties and in Bucharest municipality in 50 schools, namely 600 classes of pupils. The prevention campaign ended with an event organized at the National Children's Palace, on the 14th of December 2011.

129. Results achieved: meetings in schools: 864 actions, direct beneficiaries – 32,038 pupils.

130. The information campaign "CHILD ABDUCTION ALERT" was developed within the project CALLERT – creating an institutional mechanism for action in cases of child abduction or serious missing cases when a missing child may be in danger.

131. To promote the mechanism also for raising awareness of citizens, one video clip and one audio spot were broadcast and over 30,000 leaflets and 5,000 posters were distributed.

132. The "Creative and preventive" competition focused on the prevention of child victimization. Participants: 82 children from cartoons, journalism and painting workshops at the National Palace of Children. The competition was preceded by information activities in the prevention of violence in schools, the dangers on the street and on the playground, internet safety, gangs and entourage, road safety.

133. During 2012:

- 42 programs were implemented on national level that addressed the prevention of child victimization, 163 information campaigns, 105 action plans and 73 projects;
- The National information campaign "SAFE HOLIDAY" was intended to increase the safety of pupils during the summer holiday.

(c) Measures to prevent family violence

134. During 2008, 12 programs and 14 prevention campaigns were implemented nationally.

135. During 2009:

- 10 programs and 16 prevention campaigns were implemented nationally;
- The "Preventing family violence in rural areas" Project was implemented in September 2008-September 2009 in cooperation with the Dutch police, under the Romanian-Dutch Memorandum of Understanding on internal affairs. It aimed at increasing professionalism of the police officers involved in prevention and intervention through the acquisition of modern preventive methods and techniques used in the EU countries, based on Dutch experience.

136. During 2010, 19 projects and 36 domestic violence prevention campaigns were implemented nationally.

137. During 2011, 15 projects and 4 domestic violence prevention campaigns were implemented nationally.

138. During 2012, 20 projects and domestic violence prevention campaigns were implemented nationally.

Replies to the issues raised in paragraph 8 (b) of the list of issues

139. For statistical information referring to the activity of the M.I.A., Public Ministry, courts and MLFSPE, please see the statistical information in the Annex to the present report.

Replies to the issues raised in paragraph 8 (c) of the list of issues

140. By Law No. 217/2003 certain measures have been determined for the protection of victims of domestic violence. According to the provisions of art. 6 of the aforementioned law, the domestic violence victim shall be entitled to:

(a) His/her respect of personality, dignity and private life;

(b) Information on his/her rights;

(c) Special and proper protection tailored to his/her situation and needs;

(d) Services of counseling, rehabilitation, social reintegration as well as free of charge medical assistance, according to the law;

(e) Free of charge legal aid and counseling, according to the law.

141. According to the provisions of art. 7 para. (2) of Law no.217/2003, the public administration authorities, at central and local levels, shall ensure the exercise of the right to information of the domestic violence victims, according to their institutional competences, as the case may be, with respect to the following:

(a) The institutions and NGOs ensuring psychological counseling or any other forms of victim's assistance and protection, according to his/her necessities;

(b) The criminal prosecution body which they can file a complaint to;

(c) The right to legal aid and the institution they can turn to in order to exercise this right;

(d) The conditions and procedure for being granted legal aid;

(e) The procedural rights of the injured party and of the civil party;

(f) The conditions and procedures for being granted financial compensation by the state, according to the law.

142. Law no.217/2003 has introduced the possibility of setting up units for preventing and fighting domestic violence[5] offering free social services for the victims of domestic violence.

143. The centers for emergency accommodation (shelters) are social assistance units, with or without legal personality, of a residential type, ensuring protection, accommodation, care and counseling for the victims of domestic violence. They provide free of charge, for a determined period, family assistance both to the victim and to the minors under his/her care, protection against the aggressor, medical assistance and care, food, accommodation, psychological counseling and legal counseling.

144. The victims shall be received within the shelters only in emergency situations or with the written approval of the director of the General Department for Social Assistance and Child Protection, when isolating the victim from the aggressor is required as a protection measure. The person who has committed the aggression act shall be forbidden the access within the premises of the shelter where the victims are. (art.17).

145. The centers for recovering of the victims of domestic violence are social assistance units, with or without legal personality, of residential category, ensuring accommodation, care, legal and psychological counseling, support for the adaptation to an active life, professional insertion of the victims of domestic violence, as well the social rehabilitation and reinsertion of such victims (art. 18).

146. According to art. 23 of Law no. 217/2003, the person whose life, physical or psychic integrity or freedom is put to danger through a violent act of a family member may request to the court, for pulling apart the danger situation, to issue a protection order, disposing,

[5] 1] a) centers for emergency accommodation;
b) centers for the recovering of victims of domestic violence;
c) assistance centers for the aggressors;
d) centers for preventing and fighting domestic violence;
e) centers for informing services and arising the awareness of the population.

with provisional character, one or more of the following measures – obligations or interdictions:

(a) Temporary evacuation of the aggressor from the residence of the family, no matter if he/she has the property title;

(b) Integration of the victim, and, as the case may be, of the children in the family residence;

(c) Limiting the aggressor's right of using the house only to a part of the common residence when the house may be divided in such a way that the aggressor doesn't come into contact with the victim;

(d) Having the aggressor to keep a minimal determined distance towards the victim, the victim's children or other victim's relatives, or towards the residence, the working place or the educational unit of the protected person;

(e) The interdiction for the aggressor to go to certain determined localities or areas which the protected person frequently goes to or periodically visits;

(f) Interdiction of any contact, including the telephonic one, through correspondence or in any other way, with the victim;

(g) Having the aggressor to hand over to the police any weapons he/she holds;

(h) Entrusting the minors or establishing their residence.

147. Law no. 211/2004[6] regulates some measures on informing the victims of criminal offences on their rights, as well as on the psychological counseling, legal aid and financial compensation granted by the state to the victims of certain criminal offences, as it follows:

148. As far as the psychological counseling of victims is concerned, it should be mentioned that it is free of charge ensured by the services for the victims' protection and social reintegration of offenders, on request, for the victims of criminal offences like hitting and any other violent actions and bodily harm, perpetrated against one's family members, provided for by art. 180 para. 11 and 21 and art. 181 para. 11 in the CrC, victims of serious bodily harm, provided for by art. 182 Criminal Code, victims of the intentional criminal offences which resulted into the serious bodily harm of the victim.

149. The free of charge psychological counseling shall be granted to victims if the criminal offence has been perpetrated on Romania's territory or if the criminal offence has been perpetrated outside the Romania's territory, but the victim is a Romanian citizen or foreigner who legally resides in Romania.

150. The National Office for Witness Protection (hereinafter, the NOWP) of the Romanian Police is in charge of implementing the measures of protection and assistance relating to protected witnesses included in the witness protection program, according to Article 2, letter c) of Law no.682/2002 on Witness Protection. From 2008 until 2012, within NOWP no such measures were taken.

[6] On some measures for ensuring the protection of victims of criminal offences, with further amendments.

Article 3

Replies to the issues raised in paragraph 9 of the list of issues

151. When issuing a return decision or implementing the return measure of persons to their countries of origin, necessarily in the pre-removal procedures it is taken into account the situation in the country of origin, which could put their lives and integrity in danger, including being subject to torture or inhuman or degrading punishment.

152. Furthermore, in individual cases, the persons have the opportunity to appeal to the court the administrative removal decisions from the territory, claiming that if they are returned to their home country, they may be at risk as mentioned above.

153. As far as the protection measures provided to the victims by the MLFSPE, please see the statistical information in the Annex to the present report.

Replies to the issues raised in paragraph 10 (a) of the list of issues

154. Please see the Table on Asylum_application_registered_2008-2012.

Replies to the issues raised in paragraph 10 (b) of the list of issues

155. Law no. 122/2006 on Asylum in Romania does not provide for detention of asylum seekers. Therefore, asylum seekers may never be placed in public custody for the sole purpose of applying for international protection.

156. However, exceptional situations when asylum seekers can be placed in public custody are explicitly provided under the G.E.O. no. 194/2002 on the regime of aliens in Romania, with subsequent amendments and completions.

Replies to the issues raised in paragraph 10 (c) of the list of issues

157. All asylum applications submitted were accepted / received. For further information, please see the Table on Asylum_application_registered_2008-2012.

Replies to the issues raised in paragraph 10 (d) of the list of issues

158. Not applicable.

Replies to the issues raised in paragraph 10 (e) of the list of issues

159. Please see Table "Expulsion"

Replies to the issues raised in paragraph 10 (f) of the list of issues

160. There were no such cases, since in such situations the foreigners requested asylum protection and, after considering the reasons given, they received some form of protection in Romania.

Replies to the issues raised in paragraph 11 (a) of the list of issues

161. There was not the case for receiving diplomatic assurances from the state of origin of migrants to be returned because the return was not made in countries where such risks existed.

Replies to the issues raised in paragraph 11 (b)–(e) of the list of issues

162. Not applicable.

163. No refoulement cases of asylum seekers were registered since the consideration of the previous report.

Replies to the issues raised in paragraph 12 (a) of the list of issues

164. Law no. 122/2006 on Asylum in Romania does not provide for detention of asylum seekers. Therefore, asylum seekers may never be placed in public custody for the sole purpose of applying for international protection. Moreover, the applicants are entitled to stay in Romania during the examination of their application as well as 15 days more after the examination procedure has completed (in case the application was dismissed).

165. If the asylum application was dismissed once it has been solved through accelerated or border procedure, the alien has to leave Romania as soon as the procedure is complete.

166. However, exceptional situations when asylum seekers can be placed in public custody are explicitly provided under the G.E.O. no.194/2002 on the regime of aliens in Romania, with subsequent amendments and completions.

Replies to the issues raised in paragraph 12 (b) of the list of issues

167. During the removal proceedings, individuals enjoy the following: free access to the courts; measures for their presentation to the court at all established hearing terms are taken and non-governmental organizations ensure them access to counseling, legal representation and interpreter.

168. All costs related to these activities are supported by the European Return Fund and co-financed by the Romanian state. This category of aliens enjoys other rights under national law, including: maintaining the liaison with chosen lawyers, family members and diplomatic missions of countries of origin, free of charge healthcare, respect for their religion etc.

169. Article 17(f) of Law on Asylum guarantees to the asylum seekers the right to be informed on the rights and obligations which s/he is entitled to throughout the asylum procedure. The information must be provided in a language s/he understands or is reasonably presumed to understand. The article indicates also other rights of the asylum seekers which are at their disposal throughout the duration of the procedure, such as the right to be counseled by UNHCR and/or NGO's, the right to be assisted by a lawyer, the right to have an interpreter free of charge in any phase of the asylum procedure.

Replies to the issues raised in paragraph 12 (c) of the list of issues

170. The decision on the asylum application issued by the immigration authority shall contain the reasons in fact and in law, as well as information regarding the appeal procedure including the deadline for the submission thereof and the authority to which the appeal against a negative decision has to be submitted (Art. 14). Information regarding the appeal procedure including the deadline and the designation of the competent authority is translated into a language the asylum seeker understands or is reasonably presumed to understand.

171. The jurisdiction to review the appeals lodged against the negative decisions taken in the administrative phase rests only with the courts of law.

Replies to the issues raised in paragraph 13 of the list of issues

172. The return of asylum seekers is possible only within the framework of the Dublin Regulation (Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an

asylum application lodged in one of the Member States by a third-country national) and within the readmission agreements.

173. There are no other agreements to the return of asylum-seekers.

Replies to the issues raised in paragraph 14 of the list of issues

(a) Demarches of the Romanian authorities

174. As a member of the Western community, Romania is deeply attached to the concepts of rule of law, democratic institutions, to promoting and defending human rights. It is in this spirit that the responsible Romanian authorities have approached this subject up to present.

175. The Romanian authorities have so far no information that CIA secret detention centers ever existed on our national territory or that Romanian airports have been used by CIA for transport or detention of prisoners suspected of terrorism.

176. Up to this moment, no evidence could be produced regarding cases where persons or foreign official agencies were involved, in Romania, in illegal detention or transport of detainees.

177. In December 2005, the Romanian Senate set up a Commission of Inquiry over these allegations. The Commission's report was adopted by the Romanian Senate on April 22, 2008 (56 votes in favor, 6 against and 2 abstentions) after a debate. The report's findings clearly show that:

- There were no American secret bases in Romania;
- There never existed detention facilities for prisoners in Romania except prisons;
- There never were persons detained in Romania, with or without documents that could have been assimilated as prisoners;
- There were not any breaches on the control procedures of military and civilian planes;
- The possibility of certain flights not being checked or registered, due to negligence, is excluded;
- There were not any situations in which land procedures stipulated in international conventions were not applied to aircrafts;
- No situation occurred involving the participation of any institution in Romania, consciously or due to omission or negligence, in illegal transportation of prisoners via air or through Romanian airports;
- According to international provisions, civilian flights from the US or any other country could not have transported, left or taken aboard persons assimilated to prisoners, on Romanian territory or in the responsibility of Romanian authorities;
- A very serious Parliamentary Inquiry was made regarding media allegations on the existence of CIA centers of detention or on flights with illegal prisoners in Romania;
- The purpose of the flight stopovers in Romania had nothing to do with possible illegal transportation of prisoners on our national territory;
- Romanian authorities have expressed total transparency and availability to clarify accusations brought to our country on this issue.

(b) The complaints filed on behalf of Abd al-Rahim Hussayn Muhammad al-Nashiri

178. On the complaint filed before the Romanian judicial bodies (Prosecutor's Office attached to the High Court of Cassation and Justice):

- On 7 June 2012, Abd al-Rahim Hussayn Muhammad al-Nashiri, currently held at Guantanamo Bay prison, filed a notice to the Romanian judicial authorities, through Open Society Justice Initiative, claiming his alleged detention in a CIA prison in Romania. An investigation is currently in progress. The relevant authorities shall take all the necessary steps to solve this case with full respect for the rule of law and for human rights.

179. On the complaint filed against Romania before the European Court of Human Rights:

- The case was communicated to the Government, which presented its observations on the admissibility and the merits, in relation to the complaints communicated by the European Court.

(c) Parallelism with other states

180. Possible comparisons with developments from other countries are difficult to sustain.

181. Romanian authorities do not comment on the investigations which have been conducted or are in course in other states, each having its own specific.

Articles 5–8

Replies to the issues raised in paragraph 15 of the list of issues

182. There have been no extradition requests submitted for torture.

Replies to the issues raised in paragraph 16 of the list of issues

183. Extradition is regulated by the Romanian Constitution (Art. 19) in conjunction with Law no. 302/2004 on international judicial cooperation in criminal matters. The Romanian law is very flexible with regard to the extradition process. The grounds of refusal are established by the law. Extradition of Romanian nationals is allowed under certain conditions. Also in case the extradition is refused on grounds of nationality or because the sought person is a political refugee, the Romanian law provides for the transfer of procedure, therefore, the extradite or prosecute principle is applied in accordance with the Romanian law.

184. Also taking into account the seriousness of the offence, the condition that torture is to be considered as an extraditable offence is also fulfilled, since Law no. 302/2004 establishes very low thresholds – see Art. 26 from the Law (4 months for the execution of the punishment and 1 year for the prosecution or trial stage).

185. Law no. 302/2004 on judicial cooperation in criminal matters (excerpt)

"Art.18 – Persons subject to extradition

According to this law, upon request from a foreign State, persons who are in Romanian territory and who are under criminal prosecution or brought to justice for the commission of an offence, or who are wanted for serving a penalty or a preventive measure in the Requesting State, may be extradited from Romania.

Art.19 – Persons exempt from extradition

(1) The following may not be extradited from Romania:

(a) Romanian citizens, if the conditions mentioned in Article 24 are not met; persons who were afforded asylum by Romania;

(b) Foreign persons enjoying jurisdiction immunity in Romania, according to the conditions and limits established through conventions or other international agreements;

(c) Foreign persons summoned from abroad for being heard as parties, witnesses or experts by a requesting Romanian judicial authority, subject to the immunities provided by international conventions.

(2) The capacity of Romanian citizen or political refugee in Romania shall be assessed at the date when the judgment on extradition becomes final. If this capacity is acknowledged between the date when the judgment of extradition becomes final and the date agreed upon for surrender, a new judgment shall be delivered on the case.

Art. 20 – Extradition of Romanian citizens

(1) Romanian citizens may be extradited from Romania based on the multilateral international conventions to which Romania is a party and based on reciprocity, only if at least one of the following conditions is met:

(a) The person sought domiciles in the Requesting State at the date when the request for extradition is made;

(b) The person sought also has the citizenship of the Requesting State;

(c) The person sought committed the act in the territory or against a citizen of a European Union Member State, if the Requesting State is a Member of the European Union.

(2) In the events provided in paragraph (1) a) and c), when extradition is being requested in view of criminal prosecution or trial, a supplementary condition requires that the Requesting State provide assurances deemed as sufficient that, should he or she be sentenced to a custodial penalty through a final court judgment, the extradited person will be transferred to Romania to serve the penalty.

(3) Romanian citizens may be extradited also based on the provisions of bilateral treaties and based on reciprocity.

(4) In view of finding whether the conditions in paragraphs (1) to (3) are met, the Ministry of Justice may request the production of a document issued by the competent authority of the Requesting State.

Art. 21 – Mandatory grounds for refusing extradition

(1) Extradition shall be refused if:

(a) The right to a fair trial under the European Convention for the Protection of Human Rights and Fundamental Freedoms concluded in Rome on 4 November 1950 or under any other relevant international instrument ratified by Romania, has not been observed;

(b) There are serious reasons to believe that extradition is being requested in order to prosecute or punish a person for reasons of race, religion, sex, nationality, language, political or ideological opinion or belonging to a certain social group;

(c) The person's status is at a risk of worsening for one of the reasons shown in b);

(d) The request is submitted in a case that is pending with extraordinary courts, others than those created by the relevant international instruments, or in view of serving a penalty imposed by such a court;

(e) It refers to an offence of political nature or to an offence related to a political offence;

(f) It refers to a military offence that is not an offence of ordinary law.

(2) The following shall not be deemed as political offences:

(a) Attempts against the life of the leader of a State or against that of a member of his family;

(b) Crimes against humankind as provided by the Convention on the Prevention and Punishment of the Crime of Genocide, adopted on 9 December 1948 by the General Assembly of the United Nations;

(c) Offences provided in Article 50 of the Geneva Convention of 1949 for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, in Article 51 of the Geneva Convention of 1949 for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, in Article 129 of the Geneva Convention of 1949 relative to the Treatment of Prisoners of War and in Article 147 of the Geneva Convention of 1949 relative to the Protection of Civilian Persons in Time of War;

(d) Any similar violations of war laws, which are not provided in the Geneva Conventions mentioned in (c);

(e) The offences mentioned in Article 1 of the European Convention on the Suppression of Terrorism, adopted in Strasbourg on 27 January 1977 and in other relevant international instruments;

(f) Offences mentioned in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted on 17 December 1984 by the General Assembly of the United Nations;

(g) Any other offence the political nature of which has been removed by the international treaties, conventions or agreements to which Romania is a Party.

Art. 22 – Optional grounds for refusing extradition

(1) Extradition may be refused when the act that motivates the request is the object of pending criminal proceedings or when this act may be the object of criminal proceedings in Romania;

(2) Extradition of a person may be refused or postponed where the surrender of such person is likely to entail particularly serious consequences for him or her, especially because of his/her age or health. In the event that extradition is refused, Article 25 paragraph (1) shall apply accordingly.

Art. 23 – Transfer of criminal proceedings in case of refusal to extradite

(1) A refusal to extradite an own citizen or a political refugee obliges Romania, upon request from the Requesting State, to submit the case to its competent judicial authorities, in order for the criminal prosecution and trial to take place, if appropriate. For this purpose, the Requesting State should send to the Ministry of

Justice in Romania, free of charge, the files, information and objects that regard the offence. The Requesting State shall be informed of the results of its request.

(2) Should Romania opt for the solution of refusing to extradite a foreign national who was accused or convicted in another State for one of the offences in Article 85 paragraph (1) or for any other offence for which the law of the Requesting State provides the penalty of imprisonment with a special maximum of at least 5 years, the examination of its own competence and the exercise, if necessary, of criminal action shall take place ex officio, without exception and without delay. The Romanian authorities shall decide according to the same conditions as those for any serious offence provided and punished by the Romanian law.

Art. 24 – Double criminality

(1) Extradition may be allowed only if the deed of which the person the extradition of whom is being requested has been accused or for which he has been convicted is provided as an offence both in the law of the Requesting State and in Romanian law;

(2) By derogation from paragraph (1), extradition may be granted even if the act concerned is not provided in Romanian law, if for this act the prerequisite of double criminality is excluded by an international convention to which Romania is a party;

(3) The differences between the legal classification and the name given to the same offence by the laws of the two States are irrelevant, if an international convention or, in its absence, a declaration of reciprocity, does not provide otherwise.

Art. 26 – Seriousness of the penalty

Extradition shall be granted by Romania, in view of criminal prosecution or trial, for acts the commission of which entails, according to the legislation of the Requesting State and to Romanian law, a custodial penalty of at least one year, and in view of serving a penalty, provided it is at least 4 months long."

Article 9

186. Romania is party to a variety of international, regional and bilateral treaties. A list of these treaties, based on the type of cooperation required (e.g. extradition, mutual legal assistance) is available on the website of the Romanian Ministry of Justice at http://www.just.ro/Sectiuni/Cooperarejudiciar%C4%83interna%C5%A3ional%C4%83/Cooperarejudiciar%C4%83interna%C5%A3ional%C4%83_penala/tabid/606/Default.aspx

187. Usually, Romania makes use of multilateral instruments, bilateral treaties on international judicial cooperation being concluded with only a small number of countries.

Article 10

Replies to the issues raised in paragraph 17 of the list of issues

188. At the level of M.I.A. were intensified the staff training measures of the personnel operating on the prevention of torture and inhuman or degrading punishment by planning and organizing courses in educational institutions.

189. To achieve the initial training of personnel, the training programs have been endorsed and approved by the M.I.A. and M.N.E. in order to include training topics with incidence in the prevention of torture and inhuman or degrading punishment;

190. During 2008 – 2012, within the Institute for Studies in Public Order and Safety (hereinafter, the ISOP) a total of 936 officers followed career courses, where they received adequate training on human rights issues, including the prevention of torture and ill-treatment. An estimated number of 660 police officers have received training in this field, in the context of participating to the EUPOL UN monitors training. ISOP organizes a training program lasting five days on Prevention of Torture and Inhuman or Degrading Treatment or Punishment for staff with responsibility for custody-transfer, public order and judicial police.

191. The course structure and content themes were established in several workshops involving specialists from different M.I.A. structures, representatives of the MJ (NAP) and civil society (Association of Roma Centre for Health Policy, Sastipen Association carousel). The aim of the course is to raise awareness among the police officers and participants, regarding the protection of human rights covered under the United Nations, the Council of Europe and the Romanian legal system, the importance of respecting the rights of persons under custodial measures and interaction between police and correct them and prevent abuse and ill-treatment, degrading treatment and torture in the relationship between the police officers and the persons subject to custodial measures.

192. Since 2010 to the present, 10 training sessions were organized on the prevention of torture and inhuman or degrading punishment or treatment involving 200 agents and police officers with responsibility for custody-transfer, public order and judicial police;

193. At the level of the National Police were organized about 100 training activities and evaluation of all police officers to ensure that the provisions of the NCrC and NCrPC are known;

194. Also, as part of the professional training of police, the training curriculum provides the study of the following topics:

- Fundamental rights and freedoms of EU citizens;
- Role of the law enforcement authorities in preventing gender discrimination;
- Protection and promotion of human rights from the perspective of fighting trafficking in human beings;
- Study on sexual abuse of children.

195. Within the curriculum of the Police Agents School "Vasile Lascar" Campina and also "Septimius Muresan" Cluj-Napoca School (2012-2014 series) special topics are included for human rights issues, namely:

- Human rights – historical perspective and basic regulations;
- Legal protection of vulnerable groups (children, women, persons with disabilities);
- Human rights in police work;
- Legal protection of refugees and stateless persons;
- Protection and self-protection against victimization;
- Certain measures to protect victims of crime;
- Informing the victims on their rights;
- Drawing up the minutes on the information of the victim on his/her rights.

196. In 2011, within "Nicolae Golescu" Police Centre for Education and Training in Slatina, the specialized training institution subordinated to the GIRP, several courses were

held on detention and arrest, on special knowledge with respect to EU institutions, including in the field of human rights.

197. Also, within the post academic Master's degree, there is an in depth and specialized study of human rights issues and the impact of these issues on the current work of the police – these subjects are included in the curriculum of the course itself.

198. Moreover, a continuous and in depth human rights study is considered within the PhD curriculum, both for public order and law PhD.

199. The "Al. I. Cuza" Police Academy within the University of Bucharest prepared, on an annual basis, during 2008-2013, future police officers on the provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment through the department of public law – subject: Legal Protection of Human Rights. The aforementioned subject is studied by the students of first and second year – Law, during one quarter within theme no. 5 of the syllabus of the "Civil and Political Rights" subject. The study of the impact of civil and political rights on police activity subject consists of 8 hours (4 lectures and 4 seminars). Out of these 8 hours, 2 hours for lecture and 2 hours for seminar are dedicated to the study of the subject called: Right to bodily and psychological integrity – prohibition of torture and other cruel, inhuman or degrading treatments"

200. As far as the 1999 Istanbul Protocol is concerned, it should be mentioned that it is recommended as bibliography reference for the subject called: Legal protection of human rights – graduate diploma level. The aforementioned reference only provides the general legal framework for the study of human rights and fundamental freedoms.

201. Moreover, the preparation in the field is also ensured through the police department, having regard to the analytical curricula for Ethics and Deontology, Public Order, Criminal Investigation and Theory and Penitentiary Tactics subjects.

202. As far as the training activity of the NAP is concerned, the following could be mentioned:

203. Following the diagnosis of training needs of staff working with minors in rehabilitation centers and in prisons for minors and young people, as well as the recommendations of the Committee for the prevention of torture, the need for the organization of a course specifically devoted to this category of staff was identified.

204. This course, conducted by the Center for Training and Specialization for Officers of Arad during the year 2012, had as fundamental objectives to develop communication skills and relationship with minors and young offenders, as well as knowing the norms, rules and standards of the European Union concerning respect for human rights, as far as the persons serving custodial sentences are concerned.

205. The course was attended by civil servants with special status, officers and agents, in the re-education centers (Buziaş, Găeşti, Tg. Ocna) and several prison units which have minors and young people in custody (Bacău, Craiova, Gherla, Tichilesti, Tg. Mures). The total number of participants was 148, out of which 67 students were exercising their activities in the operative sector, 65 in social reintegration and 16 in the medical sector.

206. It aimed that, at the end of the course, the participants should achieve the following operational objectives:

- To understand the relations between communication-self-image, communication-human needs and their influence on developing relationships with persons deprived of liberty;

- To identify and to exemplify the various barriers in communication with minors and young offenders;
- To know the communication styles and to identify attitudes adopted in the communication;
- To identify people with negative self esteem;
- To understand the benefit of praise addressed to the minor and assessments of the young;
- To use criticism constructively;
- To use active listening;
- To apply the important issues relating to conflict resolution through negotiation;
- To recognize the techniques of influence;
- To know the psycho-affective peculiarities of minors and young people imprisoned and behavioral disorders in adolescents;
- To use appropriate techniques for working with children and young offenders;
- To know the European approach of punishment involving deprivation of liberty, based on respect for human rights;
- To be familiar with the rules, regulations, and standards of the European institutions which have as objective the respect for human rights.

207. On the e-learning platforms in penitentiary units were posted themes aimed at the prevention of torture and ill-treatment of detainees, in accordance with applicable norms and standards set out by the CPT. All the staff of penitentiary establishments has access to such information.

208. In addition, during recent years, special emphasis, in terms of training of staff, has been put on developing communication skills and relationship with the detainees, as well as knowing the norms, rules and standards of the European Union concerning respect for human rights, as far as the persons serving custodial sentences are concerned.

209. Moreover, the curriculum of the educational institutions that prepare the prison staff comprises topics that address these European rules and regulations.

210. Such activities take complex shapes in the operative sector (refer to persons engaged in surveillance, security guards and escorts), which requires a distinction between two fundamental aspects: improvement of the legal basis and the implementation of the legal dispositions (staff professional training).

(a) Legal basis

211. The Order no. 1676/C/2010 of the Minister of Justice approved a Regulation on the safety of places of detention under the National Administration of Penitentiaries, normative act, which in its article 15 provides that for planning, organizing, directing and executing contingency missions the following documents shall be used:

- Handbook of procedures used by negotiators in managing critical incidents;
- User manual for the management of incidents: volume I-managing operational incidents and volume II-managing critical incidents;
- Manual on the structures associated to special security measures, coercion and control as well as for the use of means and techniques of restraint.

212. The same normative act (Regulation on the safety of detention places under the National Administration of Penitentiaries) in its Chapter VII, Articles 290-302, regulates the procedures of intervention and restraint, as provided for in Article 198 para. (2) of the implementation regulation of Law No. 275/2005, approved by Government Decision No. 1897/2006, as amended and supplemented.

213. Chapter VII of the Regulation on the safety of places of detention under the National Administration of Penitentiaries defines the incidents, necessity and proportionality, duration of intervention procedures and restraint use. There are also laid down the rules to be followed before, during and after the intervention in an operational incident.

214. The framework mode of action for resolving incidents and operational critical incidents is provided in the manuals mentioned above.

215. At the end of 2009 the following documents were completed within the project PHARE RO 2005/018-147.01.04.07.01 – "The development of prisons in Romania": Negotiator's Handbook, Handbook for managing incidents (vol. 1 – operational incidents and vol. 2 – critical incidents), as well as a Training Plan for the medium and long term, for training negotiators and staff involved in the management of crisis situations.[7]

216. For regulating all the situations which need prevention and response to emergencies, critical and operational incidents, whereas normative acts previously mentioned had in view only the activities inside prisons, the Manual on measures for prevention and response to incidents produced during transport of inmates by vehicles was approved by Decision no. 500/03.06.2011 of the Director-general of the NAP.

217. Reaching this stage of the regulation, the natural next step was the development of the Manual on the structures associated to special security measures, coercion and control as well as for the use of means of restraint techniques, and which has two volumes:

- Volume I – Personal safety, approved by Decision no. 429/08.04.2011of the Director-general of the NAP;
- Volume II – Intervention of specialized structures approved by Decision no. 566/26.08.2011of the Director-general of the NAP.

218. Volume I – includes among others, separate chapters regarding the description of immobilization, immobilization techniques, medical considerations, information concerning the use of the techniques and means of restraint.

219. Volume II – includes among others, the reaction of associated structures for special security measures, coercion and control in case of operational incidents, critical incident or incidents that may take place in the means of transport.

(b) Implementation of legal provisions

220. Aware of the fact that these manuals cannot be put into practice at once, a Training Plan on medium and long term for negotiators and staff who manages incidents was prepared. This professional training plan, along with the manuals developed, is essential for the penitentiary staff to acquire the theoretical and practical skills required for a prison

[7] These include effective methods of solving the crisis and improving the professional skills of the staff of the National Administration of penitentiaries, through the Organization of training sessions. The two manuals were designed and structured so that the concepts presented to conform to the current vision of the leadership of the National Administration of Penitentiaries on the settlement of incidents and intervention, in the context of the reorganization of prisons through profiling, as well as administrative-territorial regionalization.

management of incidents in good conditions. This plan is structured in such a way as to cover all the major segments in the process of solving incidents, depending on the target group to which it is addressed, as follows:

- Training courses for negotiators – initial and continuous training in the resolution of critical incidents;
- Training courses for the staff of the security sector and prison regime in managing critical incidents and operational incidents – initial and continuous training.

221. At the same time, this plan contains sections of the training for teamwork, coordination of incidents in prisons, intervention tactics in dealing with incidents, use of means of restraint and personal safety, first aid, etc.[8]

(c) Inmate guard and transfer subunit

222. By the end of 2011, 4 training sessions were held for the personnel who carry out missions of escorting inmates transferred among prison units, attended by the officers with leadership positions, officers and agents who are actually involved in carry out this type of missions. The work was continued through two training modules organized in 2012, and 2013.

223. At these sessions, a new style was approached, namely theoretical presentation, audio-video materials, exercises and demonstrations performed by specialists in the field and practicing by each participant the implementation mode of means and immobilization techniques as well as the first aid.

224. This training program was originally designed to be made up of 30% theory and 70% practical exercises and video presentations while in the end it should rely 100% on the practical exercises.

(d) Improve the management of incidents through the development of professional skills of the staff carrying out operational activity

225. As of January 2011, a complex process of training started for members of the subordinate units of the N.A.P. and the staff carrying out operational activity. Mainly, the training module was developed for members of SASS, but there have also been co-opted other representatives of the operational activity sector personnel as well as executive officers and management functions in order to know how to act in different situations and to be able to complete the measures taken by specialized staff in the event of planned or reactive interventions. This activity was attended by 894 people (officers and agents)

226. In the year 2012, apart from region training of specialized intervention structures, 7 convocations were held and attended by 257 workers in this sector.

(e) Training of technical support personnel

227. In the year 2012 over a number of 80 civil servants with special status was trained in order to develop the skills of negotiators.

228. Considering that in the context of each incident, recording is required by using a video camera, in order that skills in video recording to be acquired by the operational activity sector staff, during the year 2012 a number of 8 convocations were held with the participation of 110 prison workers, which were attended by members of the staff carrying

[8] We will refer only to the period 2012-2013.

out operational activity, technique agents and agents of Security and inmates transfer subunit.

(f) Forecast for 2013

229. The strategy for the development of the penitentiary system for the period 2013-2016 is the result of a process of grounding future action directions for this period of time.

230. The content of the Strategic objective No. 1 – Ensuring the safety of penitentiary administration system and standardizing the mode of implementation of prison regime consists of the need for intensified activities of theoretical and practical training of the personnel carrying out operational activity in order to implement the new rules and instructions on security and prison line, in particular the incident management policies and the use of available equipment and means. The expected impact of this objective is, on the one hand, the creation of a safe prison system for inmates, staff and community, and on the other hand, the respect for the human dignity of inmates.

231. In order to further implement the Manual on the settlement of incidents (vol. I and vol. II) and the Manual for the associated structures for special security, coercion and control (vol. I and vol. II), in the year 2013 new centralized training modules are to be developed as it follows:

(1) Associated structures for special security measures, coercion and control (SASS) – 8 training sessions with the participation of about 1134 members of SASS and operative sector personnel;

(2) Negotiators – 15 training sessions, with the participation of 259 staff members;

(3) The video operators – 13 training sessions, with the participation of 206 staff members.

Replies to the issues raised in paragraph 18 of the list of issues

232. Having regard to the relatively short period of time to implement the new legal measures mentioned earlier, at the moment there is no methodology to assess the effectiveness and impact of training programs on reducing the cases of torture, violence and ill-treatment.

Article 11

Replies to the issues raised in paragraph 19 of the list of issues

233. The defendant/accused hearing rules are set out in the CrPC (republished in 1997, with further amendments and supplements), in Chap. II, Section 2, as follows:

- The defendant or accused, before being heard, is asked for his/her surname, name, nickname, date and place of birth, parents' surname and name, citizenship, education military service status, place of work, occupation, address where he/she actually lives, criminal records and any other information to determine the former's personal circumstances [art. 70(1)];
- The defendant or accused is then informed about the charges brought against him/her, the legal classification of the offence, the right to have a lawyer, as well as the right not to give any statements since the latter may also be used against him/her. If the defendant or accused gives any statements, he/she shall be asked to declare everything he/she knows about the deed and charges thereof. [art. 70(2)].

- If the defendant or accused agrees to give the statement stipulated in art.7para2., the prosecution body before proceeding to his/her hearing, shall ask him/her to personally give a statement, in writing, on the charges brought against him/her [art. 70 (3)];
- The defendant or accused shall also be notified about the obligation to inform, in writing, within 3 days, any change of home address throughout criminal proceedings. [art. 70(4)];
- Each defendant or accused shall be heard separately. If there are several defendants or accused during criminal proceedings, they shall be heard separately. [art. 71(1) and (2)];
- The defenuant or accused shall first be left to state everything he/she knows about the case. [art. 71(3)];
- The hearing procedure for the defendant or accused may not proceed by reading or reminding the statements he/she has already given in the case. [art. 71(4)];
- The defendant or accused may not submit or read any previously written statement. Nevertheless, he/she may use any notes on the details difficult to remember. [art. 71(5)].

234. From the perspective of the NCrPC, as far as the hearing of persons is concerned, the following could be mentioned among the new measures provided:

- Ensuring the dignity of the person and his/her health protection throughout the hearing procedure;
- Informing the suspect or the defendant, in writing and before to proceed to the hearing, on his/her rights in order to respect the right to a fair trial;
- Recording through audio and audio/video media the hearing of the suspect/defendant during criminal prosecution stage.

235. There is a procedure regarding the common code of conduct for the representatives of the Romanian Gendarmerie and Romanian Police regarding the handing over and escorting methods to the police stations, of the persons who have broken the law during public assemblies. The procedure has established a standardized manner with clear responsibilities in order to protect all legal rights of the persons brought to police stations. The procedure provides for written forms in which physical condition of the person handed over is stated (the potential signs of violence or pains caused by the M.I.A. representatives' actions).

236. The convicted persons shall be received at the penitentiary facility based on the penalty enforcement warrant, after establishing their identities.

237. The convicted persons are received at the penitentiary facility together with their individual files prepared by the custodial sentence enforcing bodies.

238. The reception of convicted persons shall be carried out in specially equipped premises, women being separated from men and minors being separated from adults.

239. Immediately after the reception of the convicted person, the prison administration shall be required to notify the person designated by the sentenced person where he/she is

being held. The communication shall be made in writing or by telephone and stated in the minutes.[9]

240. In addition, Chapter 4 of the Regulation for the implementation of Law No. 275/2006 stipulates strict rules regarding: the reception and registration of persons deprived of liberty, i.e. documents accompanying the inmate upon reception at the place of detention, photographing, fingerprinting and taking biological samples, recording of reception, individual record (content, people who have access to photocopy documents, handling rules), the protection of personal data, the organization of the premises for the reception of inmates, search of the inmate and of his/her baggage, hygienic and sanitary measures, confirmation of the communication about the presence of the inmate in the detention place, the initial information about the conduct rules, rights and obligations, health assessment, measures due to overcrowding.

241. Also, the Order No. 1676/C/2010 of the Minister of Justice approving the safety of places of detention under the N.A.P. regulates this field of activity. The aforementioned regulatory act provides for a two-pillar activity: the organization of inmates' reception in the prison and the tasks arising from the reception of persons deprived of liberty in places of detention.

Replies to the issues raised in paragraph 20 of the list of issues

242. The disciplinary sanction called isolation for a maximum of 10 days is provided in art. 71 paragraph (1) letter f) of Law no. 275/2006 and applies to detained or arrested persons:

- Who commit very serious disciplinary offences; or
- If they repeatedly commit serious disciplinary offences;
- Who shows obvious aggressiveness or violence; or
- If they seriously affect the regular environment in the detention centre or its safety. The above mentioned disciplinary sanction cannot be applied to children and pregnant women or to those who have the custody of children under the age of one.

243. Disciplinary sanctions shall not restrict the right to defense, the right to petition, the right to correspondence, the right to health care, the right to food, the right to light and the right to a daily walk.

244. The sanction may only be applied with the doctor's advice. The doctor shall visit the arrested persons who serve such disciplinary sanction on a daily basis and every time such visit is required.

245. Moreover, the collective penalties and corporal punishments shall be prohibited. Restraint equipment and any degrading or humiliating means cannot be used as a disciplinary sanction.

246. Disciplinary misbehavior shall be found by the staff of the prison administration and shall be recorded in a report of the incident.

247. The incident report shall be submitted to the head of the section where the inmate is held within a period of 24 hours from the date of the finding of the respective irregularity. Failure to submit the aforementioned report entails disciplinary liability of the guilty person for failure to do so.

[9] Art. 29 of Law No. 275/2006.

248. The disciplinary procedure is instituted by the head of the section where the inmate is detained, who further notifies the Disciplinary Commission.

249. The Disciplinary Committee is made up of the Deputy Director for security and prison regime as Chairman, Deputy Director for education and psycho-social assistance and a supervisor elected annually by the other supervisors, in their capacity as members.

250. The Prison director shall appoint, within 24 hours since the referral to the Disciplinary Committee, one member of the prison personnel, other than a supervisor, to conduct preliminary investigation. Within 5 days, the designated person shall present his/her findings to the disciplinary committee.

251. The Disciplinary Committee after hearing the inmate and any other person having knowledge of the circumstances in which the offence was committed, by a written decision shall apply one of the disciplinary sanctions or, as appropriate, classify the disciplinary investigation file.

252. The disciplinary sanction shall take account of the seriousness of the irregularity, the inmate's character, any other disciplinary misconducts previously committed, his/her attitude after the misconduct and during the disciplinary procedure.

253. The disciplinary penalties imposed shall be entered in a special register, and the disciplinary action and the decisions of the Disciplinary Committee shall be included in the individual's file of the person convicted.

254. Where, in the course of disciplinary proceedings, the Disciplinary Committee learns about any crime having been committed, it shall refer the matter to the competent prosecution body.

255. Against the decision of the Disciplinary Committee, which has applied a disciplinary penalty, the convicted person may file a complaint to the delegated judge for serving the custodial sentences, within 3 days from the communication thereof.

256. The sentenced person shall be heard at his/her detention place, when the complaint case is dealt with.

257. The delegated judge for the serving of sentences involving deprivation of liberty may proceed to listening to any other person, with a view to determining the truth.

258. The delegated judge for the serving of the custodial sentences shall solve the complaint by reasoned minutes, within 3 days after the receipt thereof, by delivering one of the following solutions:

(a) Admits the complaint and orders the annulment, revocation or replacement of the disciplinary sanction imposed by the Disciplinary Committee of the prison;

(b) Rejects the complaint if it is unfounded.

259. Against the delegated judge's minutes the convicted person and the prison administration may file an appeal at the court in whose jurisdiction the prison is situated, within 3 days from the communication of the decision.

260. The appeal shall be dealt with according to the provisions of article 460 para. 2-5 of the CrPC, which shall be applied accordingly.

261. The complaint filed to the delegated judge and introduced at the appeal court shall not suspend the execution of disciplinary sanctions, with the exception of the isolation sanction.

262. The Court's decision shall be final.[10]

Replies to the issues raised in paragraph 21 (a) of the list of issues

263. The Romanian Police has approved the setting-up of a multi-annual program for the upgrading/construction of detention and provisional arrest centers that meet the current needs of incarceration, aiming at the same time at aligning them with the international minimum standards regarding the detention conditions. Regarding the occupancy of detention and provisional arrest centers subordinated to the Romanian Police arrest, it should be mentioned that on May15, 2013, under the daily monitoring of DCDPAC, out of a total of 2228 available places, 1468 were filled in, 83 of those detained being women, 1385 men and 15 minors.

264. Regarding asylum seekers, it should be mentioned that they are staying in accommodation centers with OPEN REGIME.

265. In case of public custody centers there were not registered situations for overcrowded location or cases of tuberculosis.

266. On 29.05.2013, only 41% of the public custody centers seats are occupied.

267. The whole custody center capacity is of 162 places, among which 66 are already filled in.

- The medical assistance provided to detainees and their medication are offered free of charge from the state budget or the National Health Insurance Fund.
- The medical examination of the detainees is done at the admission, periodically during the detention period, when it is asked for by the detainee and when it is required.
- For the special situation when the medical examination cannot be performed by the police detention centers medical personnel (lack of specialized personnel), cooperation agreements may be issued between the district police inspectorates and county emergency hospitals in order to ensure medical assistance at the admission in the police detention centers.
- In order to take into account the recommendation of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment during the 5th – 16th of September 2010 visit, the operational standard on health and pharmaceutical care for the persons placed in the custody of the M.I.A. was approved.
- In the context of increased incidence of tuberculosis infection in Romania, 76 new cases of TB among detainees were reported in 2012. In accordance with the TB patient management, suspected TB detainees are referred for specialist advice and treatment to specialist pulmonologist within the Ministry of Health network or the prison administration. The treatment is performed in specialized clinics. The rooms from the detention centers are disinfected and case contacts are monitored by the physicians.
- In order to improve the healthcare provided in the police detention centers, during 2009-2010, the project "Adopt knowledge, practices and behavior towards vulnerable groups temporary placed in police custody on STI/HIV/AIDS prevention

[10] Art. 71-74 from the Law No. 275/2006.

and substance abuse" funded by the Global Fund to fight HIV/AIDS, Tuberculosis and Malaria, was implemented in the police detention centers.

- The main goal of the project was to train medical staff and supervisors who work in detention centers on the prevention of sexually transmitted infections, HIV/AIDS and substance abuse.
- 20 police detention centers in Bucharest and districts in Romania were included in the project during the mentioned period.

268. As a result of the project activities, a total of 42 medical staff members were trained in preventing sexually transmitted infections, HIV and substance abuse, those carrying out information education sessions on HIV prevention addressed to the people belonging to vulnerable groups temporary placed in police custody and also to the supervisory staff working in police detention centers.

269. As far as the N.A.P. is concerned, a priority objective is the limitation of the effects of overcrowding of detention places.

270. To limit the effects of overcrowding in the southern zone of the country the reeducation center Găeşti has been reorganized into an open prison with a capacity of 200 places, by Government Decision No. 1155 of 27th of November 2012.

271. The N.A.P. has shown constant concern about the development of the infrastructure of the prison system in accordance with the legal provisions and the European rules of detention, focusing on:

- Identifying buildings within places of detention, for transforming them into accommodation places (works of current and capital repairs);
- Acquisition of new spaces from other State institutions, with a view to designing new detention spaces;
- Creating new accommodation spaces through investments and/or public private partnerships.

272. Also, at the level of the N.A.P., a Commission was established for the development and implementation of the measures to extend the accommodation capacity of the prison system.

273. Following this guideline, a series of works have been completed in order to increase the detention capacity of the prison system and to improve detention conditions. The works are carried out in accordance with the European standards in force.

274. In the year 2012 a number of 1.201 new accommodation places were put into service (Iasi Penitentiary – 200 places, Juvenile and youth penitentiary Tichileşti – 312 places, Vaslui Penitentiary – 259 places, Găieşti Penitentiary – 370 places, Juvenile and youth penitentiary Craiova – 60 places).

275. In the year 2013 a number of 1.199 new beds are pending to be arranged (Vaslui Penitentiary – 285 places, Găieşti Penitentiary– 160 places and 754 more places obtained by the current repair works).

276. With the support of the MoJ, a project related to the construction of two new prisons was presented and discussions were held prior to the acceptance by the CEB to fund this project. At the same time, a work plan was structured for carrying out the funding contract, the budget for the construction of two prisons in Berceni (Ploieşti) and Caracal locations being estimated.

277. In parallel, pursuant to Law No. 178/2010 concerning public-private partnerships, N.A.P. submitted to the MoJ two projects for the construction of two new prisons, in two locations to be determined later.

278. Other activities to be held in order to relieve overcrowding in prisons:

- Intervention of repairing works of "Pavilion 04-Codlea Penitentiary" and "Detention Pavilion 2-Mărgineni Penitentiary" is in a project technical phase. The procurement for the execution of the works is due to commence;
- Transforming school Pavilion into detention spaces – Găești Prison – stage of Approval Documentation of Interventions will be examined and rebuilt in the CTE of the N.A.P.;
- Detention Pavilion no. 4 – Gherla Penitentiary – theme design phase;
- Section VI – Pavilion and Pavilion section V – Timisoara Penitentiary-phase technical expertise;
- 2 new prisons in Berceni and Caracal areas, with a capacity of 1.000 places/prison – the idea phase of N.A.P. CTE issued an opinion in principle;
- EEA/Norwegian Financial Mechanism 2009.2014, projects: "strengthening the capacity of Bacau M.Y.P to comply with relevant international instruments of human rights" and "creating a therapeutic community centre in Gherla" – are in the phase of concluding partnership agreements.

279. The status below provides the number of inmates, accommodation, and employment index of penitentiaries in the ratio of the number of people in custody in these units without including reeducation centers and prison hospitals.

Year	*2011*	*2012*	*2013*
Total	**29.782**	**30.936**	**31.941**

Year	*2011*	*2012*	*April 16, 2013*
Accommodation capacity in relation to the ECHR/CPT criteria	17.367	18.029	18.339
Accommodation capacity in relation to the criteria OMJ	25.033	25.734	26.301

Year	*2011*	*2012*	*April 16, 2013*
The occupancy index reported at the ECHR/CPT criteria	171,49%	171,59%	174,17%
The occupancy index reported at OMJ criteria	118,97%	120,21%	121,44%

280. The number of inmates in the period 2008-2013 has increased mainly due to the following reasons:

- The number of persons deprived of liberty has re-entered an uptrend since 2008 due to the economic and social factor and lowering the standard of living of the population in Romania that have boosted crime;
- Failure, since 2003, of any form of criminal liability or consequences of conviction (amnesty or collective pardons);

- Transfer of persons sentenced abroad for further serving sentences in Romania;
- Extradition of persons on the basis of the conventions and international treaties to which Romania is a party, on a mutual basis and in the absence thereof, according to the law.

(a) Medical care at the level of medical unit cabinets

281. At the reception in the prison, inmates have a complete medical exam which aims at a better understanding of the health status of the patient, the detection of any disorders with evolutionary infectious communicable or infectious or chronic diseases, imposition of an emergency food diet and medication. At the same time they are informed about available therapeutic programs for drug users, as well as programs for the prevention of communicable diseases and sexually transmitted infections.

282. The access to a doctor is done at the request of the patient and may not be restricted in any way by the guarding staff. The medical examination shall be conducted with due regard for the confidentiality of the patient, asking for supervisory personnel only in exceptional circumstances, when safety of the examiner is endangered. The medical supervision in prisons with nurses is permanently available. Since 2009, by calling 112, the emergency ambulance service and MESRE, emergency medical assistance is provided with maximum efficiency.

283. For inmates known with acute and chronic diseases, at the level of primary care offices the implementation of the recommendations of specialists is ensured (medical treatment and periodic re-evaluations, diet – there are food norms specific for patients with chronic diseases, TB, dystrophy, diabetes, HIV/AIDS, pregnant women, nursing mothers).

284. The supervision of inmates with psychiatric disorders is carried out by periodic re-evaluations, by psychiatrists, doctors in outpatient or inpatient health network, both in its own specific health network (3 psychiatric section for inmates suffering from chronic and acute diseases within the hospital prisons of Jilava, Colibasi, Poarta Alba, a detoxify section for former addicts in Rahova H.P.). The risk of suicide and decompensate in some psychiatric disorders are monitored since the reception in conjunction with the Department of psycho-social assistance.

285. The inmates refusing food are examined daily and whenever it is necessary, by the medical personnel, receive information regarding effects on health, and when the patient's condition requires, an emergency intervention is made to correct metabolic shortages and transport him/her to a hospital unit.

286. Medical assistance in case of violence is given immediately, as the doctor has the obligation, after examining the patient, to notify competent bodies and to facilitate, at the inmate's or Court's request, the conducting of a forensic examination.

(b) Dental health care in the prison system

287. The following is information on dental health care in the prison system

- Dental offices are organized in all the penitentiary units, equipped so as to ensure professional assistance;
- There are only 22 dental offices with their own practitioners while 15 offices have doctors who work based on a service contract;
- As for the other 7 situations, the dental care is ensured locally (Targu Ocna Reeducation Center, Dej Prison Hospital) or with the help of doctors from neighboring establishments (Mărgineni – doctor of the Gaesti Prison, Tichileşti

PMY – doctor from Slobozia Prison., SNPAP Tg. Ocna – the doctor at the Targu Ocna hospital prison, Jilava prison – the doctor from Jilava Hospital prison);

- All 22 doctors employed by the system have a contract for the supply of medical services with the CASAOPSNAJ, the first contracts with CASAOPSNAJ[11] date back to 2004;
- There are 6 dental laboratories within the system – 2 units with own laboratory where there are practitioners and employees who take over problems from those units lacking laboratories and 4 laboratories where there are doctors employed under a contract of service and that attend only the patients from these units.

288. Also, the legal provisions (G.D. no. 1897/2006) regarding the possibility of providing full coverage from the budget of the cost of a dental prosthesis, in terms of the loss of 50% of the mastication function has been amended and replaced with art. 28 paragraph 6 of G.D. no. 1113/2010 which stipulates the following:

> "At the request of the person deprived of liberty that has severely affected his/her mastication function in the period of detention, with consequences for the digestive function, being such situation identified by a specialist doctor within the prison system, and when it is found by analyzing his/her income that he/she does not have the necessary financial means, his/her personal contribution amount will be covered from the budget of the unit, within the limits of the funds assigned for that purpose, or from other sources, according to the law."

289. Specialized health care is provided either by the prison hospitals or specialized units within the public health system.

290. Hospital assistance is ensured both in the 6 prison hospitals as well as in other units of the Ministry of Health or ministries within the CASAOPSNAJ.

291. To increase accessibility to persons deprived of liberty to medical services in the public health system, formalities are being undertaken to conclude cooperation protocols, both at central level (M.I.A., M.N.D., R.I.S., M.H.), and at local level, with different medical territorial structures.

292. Starting with May 2013, in the Rahova Prison Hospital, there is one more operational section for chronic illnesses with kinetic-therapeutic recovery.

293. All medical care offered to inmates is done only with their consent (in accordance with the provisions of the law on the rights of the patient), and medical information about patients' health status is confidential.

(c) Prevention and control of communicable diseases

(i) TB in prisons in Romania

294. In the Romanian prison system, due to the decrease in overcrowding and measures to improve the detention conditions, as well as implementing activities in projects financed by the Global Fund to fight HIV/AIDS, Tuberculosis and Malaria (GFATM), the incidence of TB in prisoners has decreased, since 2002 onwards, when it was 20 times higher than in the general population, compared to this year, when it was 6 times higher than in the general population.

[11] A special health insurance institution which covers medical services for certain categories beneficiaries (judges, certain categories of civil servants, etc).

295. Since early 2013 up to the present, 50 new cases of pulmonary tuberculosis among persons deprived of liberty have been recorded (40 from prisons and 10 in Police arrests) as well as 11 reactivations (all persons coming from prisons).

(ii) Summary of TB Infection Control (IC) activities implemented in prisons within GF funded projects

296. IC TB related tasks in the Romanian penitentiaries have been initiated within projects financed by the Global Fund in prisons. In the 2nd Round of funding, Romania has received a non-refundable loan through the Agreement ROM-202-G02-T-00, signed by the Ministry of Health and the FG on June 6th, 2002. Under this agreement, the prison system benefited from funds through the under-funding Agreement of TB4/4 04 April 2004 and Amendment TB4/F2 on June 30th, 2006, signed by the Ministry of Health as the main Recipient of funds and Project implementation unit for Tuberculosis Control-National Administration of Penitentiaries (NAP PIU-TB), as an Implementer.

297. IC TB activities within these targeted funding focused on:

(1) Infrastructure for reducing infectious prison reservoir by fitting and equipping respiratory isolation room (AIIR-Airborne Infection Isolation rooms) and sputum cytology test collection (48 collection rooms and 112 respiratory isolation rooms);

(2) And human resources development to implement CI TB – training non-medical personnel (507 supervisors have been trained in TB and 264 educators in prevention of TB).

298. As of October 1st, 2007, Romania has received a new non-refundable loan from GF, within the 6th round of funding through the ROM-607-G04-T. The project aimed at introducing innovative activities, while others are continued, proven as effective in round 2. The innovative side of projects implemented in prisons refers primarily to the following activities:

- Structure – development of administrative capacity

(a) Appointment of CI TB committees at central level (administration) and local (prisons);

(b) Staff training in CI TB;

(c) Supervisory visits and monitoring of CI TB activities;

- Superstructure-methodology development

(d) CI TE standard procedures;

(e) CI TB specific plan for each unit;

(f) Risk register for TB infection;

(g) control tools for CI TB Plan;

(h) The operational Plan for the supervision and monitoring of CI TB activities.

(iii) Programs to prevent HIV infection among inmates and in particular among injecting drug users

299. All persons deprived of liberty who wish to be tested for HIV receive pre and post test counseling. Testing is voluntary and is made only on the basis of informed consent, mainly by rapid tests. Any positive test is later confirmed by a laboratory test. HIV-infected people receive diagnosis and establishment of antiretroviral treatment, as well as periodic

re-evaluations in the specialized clinics of the public health network. The treatment is free of charge.

300. Starting with 2008, condoms are available in all prisons.

301. Considering the growing number of injecting drug users, with technical and financial support received from UNODC, since 2008 a pilot project has been developed within the prison system, that of the substitution with methadone and needle exchange. Currently, the programs are financed from the State budget and are available in 5 units (Rahova and Jilava prison hospitals and Rahova, Jilava, and Giurgiu Prison). There are 15 inmates under the methadone treatment.

302. As a novelty, currently a screening project is running with the support from the Merck Company "Hepatitis C – curable disease". Its results will constitute the basis of future strategies supporting the supervision and control of hepatitis C in the prison system.

Replies to the issues raised in paragraph 21 (b) of the list of issues

303. In terms of human resources, they are assigned, on March 31, 2013, as follows:

- 7760 officers and agents in the detention security and prison regime sector;
- 631 officers and agents in the social reintegration sector;
- 551 officers and agents in the medical sector;
- 3206 officers and agents in other sectors.

304. The current structure of the N.A.P.'s own health network is as it follows:

(a) Central level – Medical Directorate

(1) Health care Service for inmates;

(2) Health care Service for staff.

(b) Territorial level

(1) The primary health care insurance segment for persons deprived of liberty – 38 medical offices (with local offices for distribution of medicines);

(2) The dental health care insurance segment – 33 dental offices and 6 dental laboratories;

(3) Hospital health care segment – 6 prison hospitals, specialized ambulatory care units (number of beds 1297).

	Officers		*Agents*		*Civilians*		*Total medial sector positions*	
	P	*O*	*P*	*O*	*P*	*O*	*P*	*O*
December 31, 2010	353	188	766	571	33	18	1152	777
December 31, 2011	354	185	765	603	32	17	1151	805
December, 31, 2012	354	163	763	579	32	16	1149	758
Vacant Positions		191		184		16		391
Occupancy degree		46%		75,8%		50%		65,9%

305. Due to staffing shortages registered by the medical field, the Medical Directorate has focused on cooperation with professional organizations of medical professionals (College

of physicians, Nurses, professional Societies, etc.), has supported the subordinated units which had significant personnel shortages (e.g. Pris. Bârcea Mare, Tichileşti, Vaslui, Găeşti, Cr.Tg.Ocna, SNAP Tg.Ocna – lacking employed doctors) thereby signing favorably more than 20 contracts to provide medical services for priso.,s, 16 dental service contracts, 5 general medicine service contracts, 6 contracts for nurses.

306. In the context of budgetary restrictions, the N.A.P. has sought solutions to support financing the medical activity through a variety of actions directed to the CASAOPSNAJ, resulting in:

- Resizing prison-hospital contracts;
- Unblocking the reimbursement process of primary health services provided to persons deprived of liberty;
- Regulating the financing of primary health care issue.

307. The attempts of the Medical Directorate resulted in obtaining additional funding for 10 – 15% for some prison hospitals (Jilava, Rahova) and the reimbursement of primary health services, contracts for the supply of medical services concluded by private health network with CASAOPSNAJ. The total amounts for 2012, are as follows:

- Hospital health care services – 17.384.336 lei;
- Para-clinical medical services – 28.289 lei;
- Clinical medical services – 780.137 lei;
- Dental medical services – 189.399,81 lei;
- Primary health care medical services – 2.747.078,94 lei.

308. During 2012 and 2013 and up to the present, the Medical Directorate has not registered any petitions of persons deprived of liberty on torture and ill-treatment.

309. The present functional mechanism within the penitentiary system, as far as the medical care of victims of aggression is concerned, aims at:

- Presentation with maximum swiftness to the medical examination of any reported cases of bullying (whatever the nature thereof);
- •Presentation to the closest emergency health unit for specialized exams (surgical Imaging-radiography examination, gynecology, sound-graph, etc.), depending on the severity and nature of the bullying;
- •Information of the management unit (director, deputy director for detention security and prison regime, who in turn will prepare an information note to the Prosecutor), as well as to the delegated judge;
- Presenting, as soon as possible, the inmate for forensic expertise. The result of such examination shall be mentioned in the medical records;
- Informing the education and psycho/social department staff in order to cooperate and take specific measures with respect to the assessment and psychological counseling to be provided in the respective case;
- If necessary, accommodation in the infirmary, simultaneously with the establishment of what is appropriate and what is recommended by specialist doctors.

Replies to the issues raised in paragraph 21 (c) and (d) of the list of issues

310. As far as the N.A.P. is concerned, there were no alternative forms of punishment applied.

Replies to the issues raised in paragraph 22 of the list of issues

311. This type of unit is divided into two categories.

(a) Re-education Centers

Unit	*Total number of persons in custody*	*Number of beds*	*Legal accommodation capacity*	*Occupancy index accommodation capacity*
Buziaş Re-education Center	92	108	108	85,19%
Târgu Ocna I Re-education Center	100	107	98	102,04%

(b) Penitentiaries for Juvenile and Young offenders

Unit	*Total number of persons in custody*	*Number of beds*	*Accommodation capacity according the CPT/ ECHR standard*	*Accommodation capacity according the OMJ no. 433/C/2010*	*Occupancy index legal accommodation capacity*
PMT Bacău	911	992	544	835	109,10%
PMT Craiova	517	580	399	504	102,58%
PMT Târgu Mureş	492	625	192	258	190,70%
PMT Tichileşti	301	471	382	390	77,18%
Total	**2221**	**2668**	**1517**	**1987**	**111,78%**

312. The data presented have been registered on April, 30th, 2013.

Replies to the issues raised in paragraph 23 of the list of issues

313. The police officer ethics and deontology code is approved by Government Decision no. 991/2005. According to the provisions of art. 18 (respect for human dignity) of the present code, under no circumstances, shall the police officers use, encourage or tolerate, acts of torture, inhuman or degrading treatments or punishments, physical or psychological constraints. If any police officer knows, by any means, about the aforementioned deeds being committed by another police officer, the former shall take the necessary measures, depending on the circumstances of the case, to make such conduct to cease and to inform the superior on the case.

Replies to the issues raised in paragraph 24 of the list of issues

314. The Romanian legislation in force on the regime of arms and ammunition was drafted in 1996 and is relatively updated and complies to a great extent with the international standards in the field.

315. In this context, there are two types of legislation: the general legislative framework on the regime of arms and ammunition and the special legislation regulating the organization and functioning of certain public institutions – specialized bodies in the field of defense, public order and national security.

316. As far as the in force legislative framework is concerned, the following should be stated: Law no.295/2004 on the regime of arms and ammunition repealed Law no.17/1996 on the regime of fire arms and ammunition, with the exception of the provisions of art. 46-52 that regulate the use of the arm and shall remain in force for each institution which has persons occupying positions requiring the exercise of a public authority power and which has defense and security arms. The aforementioned situation shall remain as such until

special legislation regulates the requirements and conditions when the available equipment may be worn and used.

317. The provisions of art. 47 of Law no.17/1996 regulate the circumstances in which fire arms may be used. Hence, the persons who have in their possession fire arms may use them, to fulfill their duty or military mission obligations, in the following circumstances:

(a) Against those who attack the military staff on duty, undertaking guard / security, military escort, protection duties, maintaining and restoring the rule of law, as well as against those who, by means of the action they have undertaken, by surprise, jeopardize the guarded objective;

(b) Against the persons attacking the persons invested with the exercise of public authority or those who are granted protection, according to the law;

(c) Against the persons who illegally try to get into or out from the military units, sub units or from guarded premises or areas – which are visibly delimited – established through disposition;

(d) For immobilizing the offenders who, after having perpetrated a criminal offence, try to flea;

(e) Against any means of transportation used by the persons mentioned at letters b) and c), as well as against the drivers of these vehicles who refuse to stop at the regular signals of the authorized bodies, being serious grounds to believe that they have perpetrated a criminal offence or that the perpetration of a criminal offence is imminent;

(f) For immobilizing or retaining the persons against which there is evidence or serious grounds that they have perpetrated a criminal offence and who fight back or try to fight back with a weapon or other objects which can put to danger the life or corporal integrity of persons;

(g) To impede the flea from guard or the escape of those who are under legal state of custody;

(h) Against the groups of person or the isolated persons who try to get without any right into the headquarters or premises of the public authorities and institutions;

(i) Against those who are attacking or impeding the militaries to carry out fight missions;

(j) In executing the antiterrorist intervention on the objectives attacked or captured by terrorists, for the purpose of retaining or annihilating them, releasing the hostages and re-establishing the public order.

318. Moreover, the provisions of art. 48 of Law no.17/1996 stipulate that: the persons who are authorized to possess, wear and use any arms for security or self defense reasons may use them, in self defense situations or in case of state of necessity, according to the law.

319. It should be mentioned that the provisions of art. 49 regulate the legal warning for the use of the available firearms, and art. 51 and 52 set up the conditions of the use of the fire arms. The firearms may be used to restrain the persons against whom the arm is used. The fire should be shot at the respective person's legs, to avoid latter's death, as well as to avoid, as much as possible, the use of firearms against children, women and elderly. The firearm shall not be used against children, visibly pregnant women, except for the cases when the aforementioned persons undertake an armed attack or a group attack, which endangers the life or bodily integrity of a person, or endangers the life of others or violates the territory, air space or national waters of a neighboring state.

320. Moreover, the provisions of Law no.218/2002 on the organization and functioning of the Romanian Police, with further amendments and supplements, of Law no.550/2004 on the organization and functioning of the Romanian Gendarmerie and of Government Emergency Ordinance no.104/2001 on the organization and functioning of the Romanian Border Police, approved with amendments by Law no.81/2002, with further amendments and supplements, stipulate the use of the firearms in exercising duty obligations.

321. Please, see beneath the special legislative provisions regulating the organization and functioning of certain public institutions:

- Law No. 218/2002 – the provisions shall be applicable to the following bodies: General Inspectorate of the Romanian Police (G.I.R.P), its territorial units, the general Directorate of Bucharest Police, police county inspectorates, education institutions for staff initial and continuous training, other bodies whose cooperation is required by the police. The aforementioned provisions stipulate that if necessary, the police officer may use his/her firearm, under the circumstances and conditions laid down by the law;

- Law No. 550/2004 stipulates the circumstances in which, in the course of fulfilling duty obligations, the military staff of the Romanian Gendarmerie may use their firearms (art. 29);

- Government Emergency Ordinance no.104/2001 on the organization and functioning of the Romanian Border Police was amended by Law no.280/2011[12] that introduced regulations on the use of the firearm (Chap. V, Section 3 – Use of firearms). The ECHR case law was considered when drafting the aforementioned regulations (e.g.: the decision delivered in Nachova and others against Bulgaria case). The aforementioned legislation stipulates that the border police officer may use his/her firearm in self defense or in case of state of necessity, as well as when other means of restraint and constraint were useless, in case of absolute necessity, in fulfilling his/her duty obligations, that is, in the following circumstances:

  (a) For ensuring the protection of any person against illegal and imminent violence, which could result into the death or serious injury of that person, or for preventing the perpetration of a criminal offence through violent actions implying a serious threat to the life or bodily integrity of a person;

  (b) When there is resistance against the retaining of a person who, after having perpetrated a criminal offence through violent acts, does not obey the immobilization, trying to flea, and letting such person into freedom could en danger the life or bodily integrity of persons;

  (c) For the enforcement of a preventive arrest warrant, if the person is trying to flea and letting such person free could en danger the life or bodily integrity of persons;

  (d) To impede the flea from guard or the escape of a person who is under legal state of custody, if letting such person free could endanger the life or bodily integrity of persons;

[12] On the amendment of Law no.265/2010 for the amendment of G.E.O. no.104/2001 on the organization and functioning of the Romanian border police and repealing art. 4 para. (4) of G.E.O. no.105/2001 on Romanian border, as well as for the amendment and supplement of G.E.O. no.104/2001 on the organization and functioning of the Romanian border police and of G.E.O. no.105/2001 on Romanian border.

(e) Against the groups of persons or persons who try to get without any right and by violence into the headquarters or premises of the public authorities and institutions, thus seriously affecting the public order or endangering the life or bodily integrity of persons;

(f) Against any means of transportation used by the person or persons mentioned at letters a) and e), as well as against the drivers of these vehicles who refuse to stop at the regular signals;

(g) Against animals which obviously endanger the life or bodily integrity of the respective person or of others.

Articles 12 and 13

Replies to the issues raised in paragraph 25 of the list of issues

322. The Presidential Commission for the Analysis of the Communist Dictatorship from Romania was set up by Presidential Decision in 2006, having the role of analyzing the communist regime from Romania and drafting a comprehensive report on the communist regime from Romania, of conceiving strategies meant to offer feasible solutions for the identified problems and advise the head of state in regard to the stage of accomplishing the recommendations provided in the Report. In the conclusions of the Report submitted by the head of state on 18 December 2006 and partially assumed before the reunited chambers of Parliament were included also recommendations, inter alia the official condemnation of the communist regime as an illegitimate and criminal regime, the nominalization of those who are guilty of crimes and abuses, as well as the commencement of legislative actions destined to enable the investigation of the crimes and abuses committed during the communist regime. Throughout the Report, several persons are identified and named, mainly from the upper echelons of the Romanian Communist Party and of the Security Service deemed guilty of the horrors of communism in Romania, mentioning also the biographies of some of the incriminated persons. Nevertheless, the mandate of the Commission did not provide the implementation of actual measures to amend the legal framework that would have enabled the suing and conviction of the guilty persons.

323. Further to the acceptance of the content of the Final Report, most obligations were incumbent on the State authorities in order to enable the investigation and conviction of those guilty of crimes and abuses. Among such, one of the most significant items was "the declaration of the crimes and abuses of the communist regime – based on current proof – as being crimes against humanity and as a consequence, they are not barred by statutory limitations period." Nevertheless, the criminal condemnation of the persons liable for abuses and crimes committed during the communist regime encountered a series of legal obstacles, justice being unable to find immediate solutions regard to the methods by which the perpetrators involved in repression deeds may be punished.

324. The Amnesty issued by Nicolae Ceauşescu in 1988 rendered impossible the judging of any offence committed before such date and penalized with punishments shorter than 10 years of prison inclusively, less genocide and war crimes that could not be barred under the Socialist Criminal Code. Among such offences were: manslaughter (5 year – statute of limitations term), torture (8 year – statute of limitations term), bodily injury (3 year – statute of limitations term), assault or other acts of violence (5 year – statute of limitations term), aggravated bodily injury (8 year – statute of limitations term), lethal assaults or injuries (10 year – statute of limitations term), illegal deprivation of liberty (8-10 year – statute of limitations term), burglary (5 year – statute of limitations term), violation of the mail secrecy (3 year – statute of limitations term), abuse of office against the interests of a

person (5 year – statute of limitations term), illegal arrest and abusive investigation (3 year–statute of limitations term), etc.

325. Hence, further to such amnesty, only the offences of manslaughter, 1st degree murder and instigation to murder committed before 26 January 1988 or crimes with no statute of limitations terms could be judged.

326. The crimes which are not barred by statutory limitations period provided in the socialist Criminal Code have not included the category of crimes against humanity. They referred only to genocide (which was not referring to political groups – against which the majority of crimes and abuses of the former communist regime were committed), war crimes (not concerning crimes committed during time of peace, as the communist crimes were) and inhuman treatment (targeting only specific categories of victims: injured persons, ill people, civil sanitary staff of the Red Cross or of organizations assimilated thereto, shipwrecked persons, war prisoners and generally any other person falling under the power of the enemy). Although Romania signed international conventions on the non-applicability of statutory limitations period to crimes against humanity, more precisely the Convention on the non-applicability of statutory limitations to war crimes and crimes against humanity, UN Resolution No. 2391 (XXIII), from 26 November 1968 ratified by Romania in 1969 and applicable at international level in 1970, such category (crime against humanity) has never been inserted in the socialist criminal codes or in post-communist ones until 2012.

327. In 2012 Law No. 27/16 March 2012 for the amendment and supplementation of the Criminal Code of Romania and Law No. 286/2009 on the Criminal Code came into force. This approach clarifies the provisions from the Criminal Code stipulating the non-applicability of statutory limitations periods to crimes against humanity and peace, stipulating that the aforementioned deeds may be judged, irrespective of the date when they had been committed. The law also stipulates the non-applicability of statutory limitations periods to the criminal offences of manslaughter, murder and 1st degree murder, for crimes for which the statute of limitations terms have not elapsed yet. Under the present law, crimes of communism could be still judged, if they classify within the category of crimes against humanity.

328. In December 2005, the Government of Romania issued Decision no. 1724 (with subsequent amendments and supplements) on the setting up of the Institute for the Investigation of the Crimes of Communism in Romania (IICCR). The fundamental objectives of IICCR were the "scientific investigation and identification of crimes, abuses and violations of human rights throughout the communist regime in Romania, as well as the notification of the rightful bodies when situations of infringing the law are detected". For the identification of crimes, abuses and other violations of fundamental rights and freedoms within the period 6 March 1945 – 22 December 1989, IICCR commenced a series of specific investigations (according to art. 3 and 4 of Government Decision No. 1724/2005). Thus within the period 2006-2009 six criminal complaints were filed with the Public Prosecutor's Office attached to the High Court of Cassation and Justice – the Section of Military Prosecutor's Office against certain social and professional categories, such as the officers of the Security Service/jails/militia, physicians, prosecutors who were guilty of recruiting informers from among pupils and children, the application of ill treatments and abusive detention practices of political prisoners imprisoned during the communist period, the organization of assaults with parcel bombs at the order of Nicolae Ceauşescu, the president of the Socialist Republic of Romania between 1974 and 1989, against known voices of the anti-communist dissidence such as Monica Lovinescu, Virgil Ierunca, Vlad Georgescu, the investigation and torturing of persons arrested between 1945-1989 in order to extort information and the abusive psychiatric hospitalization of completely healthy. The majority of the complaints filed by IICCR were rejected and "Not to start the criminal prosecution" was ordered. The criminal complaints filed by IICCR as a governmental

agency had nevertheless the role of maintaining the debate upon the necessity of condemning the crimes of communism and assimilate them to the category of crimes against humanity. IICCR has constantly militated to find feasible legal solutions in order to enable the conviction of the crimes and abuses committed during the communist regime.

329. Within the period 2010-2012, IICCRNIMRE (taking up this name further to the merger of the Institute for the Investigation of the Crimes of Communism in Romania and the National Institute for the Memory of the Romanian Exile) lost one of its initial objectives, i.e. the right to address the prosecutor's office when crimes and political abuses committed between 1945-1989 are identified. In august 2012, by Government Decision 768, the Government of Romania enabled again IICCRNIMRE to "scientifically investigate and identify the crimes, abuses and infringements of human rights throughout the entire period of the communist regime in Romania, as well as the notification of the relevant bodies when violations of the law are discovered". The same regulation also stipulates that IICCRNIMRE "gathers data, documents and testimonies regarding all actions that impaired human rights and freedoms during the years of the communist regime and based on which it notifies the criminal prosecution bodies irrespective of the time and circumstances when they had been committed". The Institute concurrently reveals the party activists, civil employees and magistrates who worked within the repressive party and state structure and identifies the committed abuses and crimes ordered or inspired by the persons that occupied such positions. According to the same Government Decision, specialized personnel from the Public Ministry and the Ministry of Administration and Internal Affairs may be delegated within the institution.

330. Further to acquiring again such objectives, IICCRNIMRE resumed the investigation activity. This year, IICCRNIMRE has triggered the specific investigation procedure in the case of 35 persons that were holding management positions in the repressive structure and that are suspected of having committed political crimes during the communist regime. Further to the investigations performed during the last period, IICCMER identified numerous deeds with possible consequences of criminal nature committed by 35 employees of the General Division of Penitentiaries further to exerting position within the period 1950-1964. There are grounded clues in regard to the committing by the identified persons of serious crimes in the penitentiaries or camps and colonies where they were activating. In such cases, the deeds of the 35 persons cumulate the constituent elements of 1st degree murder or genocide crimes. The investigated persons are of ages ranging between 81 and 99 years and live on the territory of Romania. Concurrently, IICCRNIMRE entered into the possession of identification data, precise names and addresses of the concerned persons. In accordance with the evidence that shall result during the investigations, the researches regarding potential perpetrators from the Romanian cell system during the communist period shall be extended also to other persons that had held managing positions in the repressive structure. On the finalization of the investigations, IICCRNIMRE shall notify the criminal prosecution bodies and shall remit all data and evidence resulting from the investigations to the Public Ministry.

331. IICCRNIMRE also proposes itself to conduct certain investigations on site that shall consider the procurement of all data and information possible that may help and support the reconstruction of the deeds and the determination of the guilt in certain individual and collective cases committed by the representatives of the repressive institutions of the former communist regime from Romania. The majority of the cases concerns persons that were killed or executed on command, without being judged by any criminal court of law. Concurrently, the investigation of certain cases of persons that died due to different reasons during their detention in the communist penitentiaries is also being considered. A significant part of the investigations on site shall be directed to seeking and identifying the resting places of the victims that most of the times were buried on hidden sites and within isolated areas, without the knowledge of the relatives or dependants and in many cases such

locations are still unknown. One direction of the investigations will target the approach of special cases concerning the discovery and recovery of objects or goods that may be directly linked to different forms of anti-communist resistances that occurred in time on the territory of Romania.

Replies to the issues raised in paragraph 26 of the list of issues

332. As far as the M.I.A. activity, the statistical data is shown in Table 3.

333. The judicial statistics regarding the Public Ministry's prosecution bodies concern the basic activities carried out by prosecutors:

- Criminal investigation and the supervision of the criminal inquiries;
- Judicial activity in criminal and civil cases;
- Solving of the citizens' complaints, notifications, requests, and memos.

334. The judicial statistics regarding the Public Ministry's prosecution bodies are prepared by the Prosecutor's Office of the High Court of Cassation and Justice in a unitary statistical reporting system, on dedicated forms. All the prosecutor's offices attached to local courts, tribunals, courts of appeal, various directorates, sections, and other departments of the Prosecutor's Office attached to the High Court of Cassation and Justice, including military prosecutor's offices shall use these forms.

335. The forms, the basic methodologies, and the information gathering techniques have been adapted according to the legislative amendments regarding the powers of prosecutor offices. These statistical forms reflect the need to adapt judicial statistics to users' requests. The transparency of judicial statistics regarding the Public Ministry's prosecution bodies is materialized in a wider dissemination of the information to a larger number of users.

336. All prosecutor's offices report statistics concerning the prosecutors' three basic activities on a quarterly and annual basis.

337. Dedicated forms have been prepared for each activity.

338. The forms used by the Public Ministry's prosecution bodies are "complex statistical tables" containing a multitude of indicators classified vertically in "statistical units" according to the recorded object, and a multitude of indicators classified horizontally according to the activity carried out by the prosecutor.

339. In the summarizing form P1/P2 on the criminal prosecution and supervision of the criminal inquiries activities carried out by the prosecutor, the object of the statistical report is expressed in statistical units classified by titles in the criminal code and by the main offences provided under these titles, with subtotals by titles and a final total of the subtotals by titles in the "crimes, overall total".

340. In addition to the classification by the titles in the criminal code, the summarizing form P1/P2 also contains another statistical unit regarding the crimes provided under specials laws.

341. Each prosecutor's office enters the data on its own activities in the statistical forms.

342. The filled-in statistical forms must be checked for correctness and accuracy of the statistical registrations. The basic verifications of statistical forms consist in an arithmetic verification, a verification of the correlation between indicators, and a logical or substantive verification.

(a) The arithmetic or mathematical verification consists in checking the correctness of the on-going data totalizing operations, checking the sub-totalizing

operations of data by groups of indicators in the summarizing forms, and checking the overall totalizing of subtotals by groups;

(b) The verification of the correlation between the various indicators consists in checking the correct display of certain partial indicators through group total indicators, and the checking of the correlation between certain indicators in the basic forms and the same indicators transposed and displayed in other forms, deriving from the basic ones. The verification is made based on the "verification keys" provided in the columns where the indicators are denominated;

(c) The logical or substantive verification consists in checking the correctness of the statistical registrations according to the indicators specific to the respective activities.

343. The checking, on all accounts, of the correctness and accuracy of the statistics entered in the statistical forms is performed by the persons designated to fill in the forms, to check them, to sign them, and to certify the correctness of the reported data.

344. The checking performed by the head of the prosecutor's office must concern the correctness of the registration but also the "keys" required in the forms.

345. For the statistical recording of the criminal prosecution activity and that of supervising the inquiries, the Public Ministry uses the statistical form P1/P2 for all types of crimes (including the trafficking in human beings and violence against women and children). This form contains 106 indicators and a criminological annex with 28 indicators. Some of the statistical indicators used are the age (by age groups), the gender, and the citizenship (only if alien) of the defendant sent to trial, as well as whether the victim is a minor, his/her gender and citizenship (only if alien).

346. Data referring to the defendant's/victim's nationality/ethnicity are not gathered.

347. We also do not gather statistical data regarding convictions.

348. The 106 statistical indicators are common for all the crimes for which data are gathered, including those referred to in question 26.

349. As for the statistical data on final convictions decisions: the statistical applications implemented by the Ministry of Justice at the level of the courts, show in the module of criminal statistics the number of the persons against whom final decisions had been and the type of penalties applied for torture and ill treatment, trafficking and domestic violence, sexual violence, or offences committed on grounds of discrimination. The statistical information is also collected and classified in semester reports and annual reports (Please, see the Annex with statistical information for 2012).

Replies to the issues raised in paragraph 27 (a) of the list of issues

350. Any person is entitled to file a complaint, with no restriction whatsoever, against M.I.A. staff, including by electronic means on the official website of the ministry.

351. All complaints are treated in a serious, swift and impartial manner in order to have them solved and, as the case may be, have the guilty person/s sanctioned.

352. With respect to the jurisdiction to conduct the criminal prosecution for torture or ill treatment cases, the former shall rest with the prosecutor, as provided by art. 209, para. (3) of the CrPC in force. If the prosecution body is notified according to the provisions of art. 221 of the CrPC, it shall check its jurisdiction over the case as provided in art. 210 of the CrPC. In case its jurisdiction is not applicable, [as in the case of art. 209 para. (3) of the CrPC] it shall send the case to the supervising prosecutor in order to notify the competent body.

Replies to the issues raised in paragraph 27 (b) of the list of issues

353. According to the provisions of art. 65 of Law no.360/2002 on police officers, the police officer against whom criminal proceedings have been instituted or who is tried without being detained or arrested and is provisionally released on bail shall continue to exercise his/her duties according to his/her superior's orders having at the same time his/her salary diminished. In case of preventive arrest, he/she shall be suspended.

Replies to the issues raised in paragraph 28 of the list of issues

354. Any person can file a complaint to judicial bodies in order to have his/her rights and legitimate interests defended.

355. In cases of victims of torture, any person can file a complaint or report, as provided in art. 222 and art. 223 of the CrPC.

356. Hence, the Romanian Constitution enshrines the principle of free access to judicial bodies to any person, in order to have his/her rights, freedoms and legitimate interests defended. The exercise of the aforementioned right may not be restricted. The solving of the case in a fair manner and within a reasonable period of time is guaranteed (art. 21).

357. According to the abovementioned constitutional principle, Law no. 304/2004 on judicial organization, republished stipulates the following:

> "Art. 6 – Anyone may address justice in defense of his/her rights, freedoms, and legitimate interests in the exercise of his/her right to a fair trial. Access to justice may not be restricted."

358. Also, art. 51 of the Romanian Constitution enshrines the right to petition before public authorities. The exercise of the aforementioned right shall be exempt from any taxes. The public authorities shall reply to the petitions filed within the legal terms and conditions. Art. 52 of the Romanian Constitution provides that a person who has had one of his/her right or legitimate interest harmed, by a public authority, by and administrative document or by failure to reply within the legal deadline to a petition, is entitled to have his/her right or legitimate interest acknowledged, to have the respective document annulled and the damage redressed.

359. In supplementing the aforementioned provisions, art. 1 para. (1) of Law no. 554/2004 on administrative disputed claims stipulates that:

> "Any person who considers that one of his/her rights or one of his/her legitimate interests is injured by a public authority, by an administrative act or by the failure to settle a petition within the legal time limit, may address to the competent administrative disputed claims court, for the annulment of the act, the acknowledgement of the claimed right or of the legitimate interest and the legal redress of the damage caused. The legitimate interest may be both private and public."

360. Moreover, as far as the right of the arrested persons or sentenced to serve a custodial conviction to file a complaint to an independent institution, it should be mentioned that Law nr. 275/2006 on serving the sentences and other measures ordered by judicial bodies during criminal proceedings provides the following:

> "Art. 44 – Right to petition
>
> (1) The right to petition of the persons who serve the punishments involving deprivation of liberty shall be safeguarded.
>
> (2) The petitions and the answer to the petitions are confidential and may not be opened or retained.

(3) For the purpose of this law, the term petition shall include any request or intimation addressed to the public authorities, judicial bodies, courts or international organizations.

Art. 45 – Right to correspondence

(1) The right to mail of the persons who serve the punishments involving deprivation of liberty shall be safeguarded;

(2) The mail shall be confidential and may not be opened or retained unless the limits and conditions provided by law are complied with;

(3) For the purpose of preventing the bringing into the penitentiary, by mail, of toxic substances, explosives or other similar objects whose possession is forbidden, the mail may be opened, without being read, in the presence of the convicted person;

(4) The mail may be opened and retained if there is solid evidence in respect of committing an offence. The person who serves the punishments involving deprivation of liberty shall be notified in writing forthwith with regard to taking such measures, and the mail retained shall be classified in a special file that shall be kept by the administration of the penitentiary;

(5) The opening and retaining of mail, according to paragraph (4), may only be carried out based on the orders issued, in writing and motivated, by the judge delegated for the enforcement of punishments involving deprivation of liberty;

(6) The provisions of paragraphs (3) and (4) shall not apply in case of mail with the counselor for the defense, with the non-government organizations that carry out their activity in the field of protection of human rights, as well as with the courts or international organizations whose jurisdiction is accepted or recognized in Romania;

(7) The persons who serve the punishments involving deprivation of liberty may receive and dispatch letters in their mother tongue, in compliance with the provisions of paragraphs (1)-(6).

Art. 46 – Measures for ensuring the exercise of the right to petition and the right to mail

(1) In order to ensure the right to petition and the right to mail, the warden of the penitentiary shall be obliged to take all measures to make available to the convicted person the necessary materials, as well as to install mailboxes inside the penitentiary.

(2) The petitions and mail shall be collected by the personnel of the provider of postal services, to whom access inside the penitentiary is ensured;

(3) The personnel of the provider of postal services shall be accompanied inside the penitentiary by a person specially appointed by the warden of the penitentiary;

(4) The answer to petitions and mail addressed to the persons who serve the punishments involving deprivation of liberty shall be handed over immediately to the addressee, against signature;

(5) The expenses occasioned by the exercise of the right to petition and the right to mail shall be covered by the persons who serve the punishments involving deprivation of liberty. In case such persons do not dispose of necessary funds, expenses for the exercise of the right to petition by expenses and intimations addressed to the judicial bodies, courts or international organizations whose competence is accepted or recognized in Romania and those for the exercise of the right to mail with the family, the counselor for the defense and the non-government

organizations that carry out their activity in the field of protection of human rights shall be covered by the administration of the penitentiary;

(6) The provisions of art. 42 para. (12) shall apply accordingly."

361. Based on the right to petition, any person against whom a custodial measure had been ordered may, in order to have his/her rights and interests defended, address petitions, claims and intimations to any authorized person, institution, governmental or non-governmental organization, at local, central national or international level. The persons deprived of their liberty shall be informed on the conditions to exercise the aforementioned right, as soon as they are received in the detention facilities and throughout the period of serving the sentence, by the administration staff or any other authorized persons.

362. Any person serving a custodial measure can address directly, either orally or in writing, to the delegated judge, the head of the detention facility or to the persons appointed by the latter thereto. The persons serving a custodial measure can be heard by the delegated judge, inspectors or any other authorized representatives, without the detention place staff being present. The hearing can take place according to the schedule determined by the delegated judge, as well as weekly, by the head of the detention place.

363. The costs of exercising the right of petition and correspondence shall be paid by the inmate to exercise that right. If persons deprived of liberty do not have the necessary funds, the expenses for exercising the right of petition and correspondence shall be paid by the administration of the place of detention, in accordance with article 46 para. (5) and (6) of the Law. Costs arising from the exercise of the rights of petition through postal mail, under arrangements other than the simplest way, are paid entirely by the persons deprived of liberty.[13]

364. Pursuant to article 53 of the implementation regulation of law No. 275/2006, Decision no. 498/04.06.2007 was issued by the Director-general of the N.A.P. on the procedure for the distribution of material intended for the exercise of the right of petition and mail.

Replies to the issues raised in paragraph 28 (b) and (c) of the list of issues

365. If any police officer breaches the human rights by committing one of the ill treatment-related-offences (abusive conduct, unlawful arrest and illegal investigation subjecting a person to ill treatment or torture), according to the provisions of art. 209 of the CrPC, the prosecution shall only be conducted by the prosecutor. The police bodies shall have no jurisdiction in conducting any investigation in these cases.

366. If the complaints refer to the aforementioned offences, the police bodies shall inform the prosecutor who shall be competent to conduct the prosecution of the case. If the latter deems necessary to issue an ordinance, according to art. 217 para. (4) of the CrPC, to have investigation acts conducted by the judicial police bodies, he/she shall proceed accordingly.

367. Nevertheless, during 2008-2012, 4 complaints were filed (against one officer and 3 non-commissioned officers) within the Romanian Gendarmerie. For the offence of abusive conduct, the 4 military staff were sentenced to 11 month – imprisonment under suspension and discharge.

368. Moreover, during 2012, within the General Immigration Inspectorate (hereinafter, the G.I.I.), a Filipinas woman complained against a G.I.I. officer about the latter's

[13] Art. 50 and 52 of the Regulation for the implementation of Law no.275/2006.

aggressive behavior. She claimed that she had been hit with the head against the table, being at the same time deprived of her liberty.

369. Since G.I.I. has no jurisdiction in judicial matters, the case was referred to 14 Police Station since within this institution it had already been filed a criminal complaint to this end. The aforementioned police station was also competent to investigate such cases.

370. Also, during 2012, a Tunisian man complained about the fact that he had been threatened by the commander of the body where he was accommodated (a public custody center) as well as that he had been hit by 3 police officers within the respective center.

371. Since G.I.I. has no jurisdiction in judicial matters, the aforementioned case was also referred to the competent prosecutor's office bodies.

372. The persons deprived of their liberty in detention and preventive arrest centers can file a complaint to the authorized bodies pursuant to the right to petition and correspondence (both rights being enshrined in and guaranteed by Law no. 275/2006). Also, the persons deprived of their liberty can file different petitions directly to the administration of the detention place. Such petitions are registered and solved or referred to the competent bodies. Having regard to the already provided information, there is no available data on the actual number of such complaints since the inmates can address through mail directly to the competent bodies.

373. The activity of solving petitions in the Prison Inspection Directorate as defined in art. 2 of Government Ordinance No. 27/2002 concerning the regulation of the activity of the Petitions, according to the claimant and the object of the petition, is an important component of the:

- Correct application of the rules of the prison regime for persons deprived of liberty and children placed in re-education centers, as provided by the legislation, regulations, codes, ordinances, orders, regulations, etc. at the time the petition is filed;
- The proper exercise of public duties in the prison system in accordance with the provisions of Law no. 293/2004 concerning the civil servants with the special status of the N.A.P., with further amendments and supplements, etc.

374. A high number of persons deprived of liberty complain, although most complaints are unjustified and/or unconfirmed. Although part of the issues of the petitions falls within the competence of the administration of the place of detention, the petitioners do inform neither the detention unit staff nor the delegated judges about such the aforementioned issues.

375. The complaints on torture, inhuman, degrading treatment or other ill-treatment are very low in number as compared to the total number of complaints (negligible compared to the average of 1,000 petitions solved annually). None of these has been confirmed so far.

376. Law no. 275/2006 on serving the sentences and other measures ordered by the judicial bodies during criminal proceedings provides the following complaining procedure with respect to a person in preventive arrest facilities:

> "Art. 38 – Exercise of rights of persons convicted to custodial sentences
>
> (1) The exercise of rights of persons convicted to custodial sentences may not be limited more than within the limits and under the conditions provided by the Constitution and law;
>
> (2) Against the measures concerning the rights provided in this chapter, taken by the administration of the penitentiary, the persons convicted to custodial sentences can file a complaint with the judge delegated for the enforcement of custodial

sentences, within 10 days as of the date when they were informed about the measure taken;

(3) The convicted person shall be heard mandatorily at the place of arrest by the judge delegated for enforcement of punishments involving deprivation of liberty;

(4) The judge delegated for enforcement of custodial sentences may proceed to hearing any other person to find out the truth;

(5) The judge delegated for enforcement of to custodial sentences shall settle the complaint, by a reasoned interlocutory judgment, within 10 days as of its receipt and shall rule, by way of an interlocutory judgment with reasons, on one of the following solutions:

(a) He admits the complaint and orders the cancellation, revocation or change of the measures taken by the administration of the penitentiary;

(b) He rejects the complaint, if it is not grounded;

(6) The interlocutory judgment of the judge delegated for the enforcement of to custodial sentences shall be communicated to the convicted person within two days as of its delivery;

(7) Against the interlocutory judgment of the judge delegated for the enforcement of punishments involving deprivation of liberty the convicted person may file an appeal to the court of first instance in the jurisdiction of which the penitentiary is located, within 5 days as of the communication of the interlocutory judgment;

(8) The appeal shall be examined according to the provisions of Article 460 (2)-(5) of the Criminal procedure code that shall apply accordingly;

(9) The judgment of the court of first instance shall be final.

Art. 39 – Safeguarding the respect for the persons who serve the punishments involving deprivation of liberty

(1) The respect for the persons who serve the custodial sentences shall be safeguarded by the judge delegated for the enforcement thereof.

(2) The representatives of the trade union organizations that carry out activities in the field of protection of human rights may visit the penitentiaries and may contact the persons who serve the custodial sentences, with the agreement of the general director of the National Administration of Penitentiaries.

(3) The meetings among the representatives of the non-government organizations provided in paragraph (2) and the persons serving custodial sentences shall be carried out under strict confidentiality terms, under visual surveillance."

Replies to the issues raised in paragraph 28 (d) of the list of issues

377. The procedure described at let. a) shall also apply to detained minors.

378. Within the Romanian Police there is no special procedure on filing any complaints by detained minors and the aforementioned rules are also applicable in this case.

379. The detained persons may file different complaints directly to the administration of the detention place. Such complaints are registered and solved or referred to the competent bodies to solve them. In this context, there is no actual information on the number of such complaints, the detained persons being able to address directly to the competent bodies.

380. As far as the asylum applicants are concerned, it should be mentioned that within G.I.I. there is no special system of filing complaints. If a complaint needs to be lodged, then the general procedure shall be used. The complaint shall be lodged to the national police – in order to have them investigating the case – or to the prosecutor in order to conduct the prosecution.

381. The asylum applicants are accommodated in accommodation and asylum procedure centers under an OPEN REGIME.

382. Unaccompanied minors cannot be placed in detention centers. The only possibility is to have them placed in the same detention center with their family.

383. During the reference period, there have been no complaints on torture or ill treatment.

384. The latest legislative measures preserved the provision on prohibition of extradition of a foreign citizen if there are serious reasons to believe that he/she will face torture acts in the state he/she will be returned to. The relevant provisions in this context are the ones in art. 92 para. (1) let. f) in G.E.O. no.194/2002 on the regime of aliens in Romania, approved with further amendments and supplements by Law no. 357/2003. According to the abovementioned, the return of any person shall be prohibited if "there are justified fears that his/her life is endangered or he/she faces acts of torture, inhuman or degrading treatment in the state where he/she is to be returned to."

385. Determining such circumstance falls within the jurisdiction of the court.

386. Moreover, if the foreigner is placed in public custody in order to have him/her returned and it is found that he/she faces the risk of being tortured in the state to be returned to, the measure of having the respective foreigner under public custody shall cease *de iure*. Hence, art. 93 para. 61 stipulates that the public custody measure shall cease *de iure* if, after it has been taken, justified fears arise that the life of the respective alien is endangered, or he/she faces acts of torture, inhuman or degrading treatment in the state where he/she is to be returned or has filed an application to be granted a form of protection.

387. The Romanian Immigration Office may order to have the illegal aliens or former asylum applicants returned from the Romanian territory.

388. The return decision may be challenged within 10 days from the communication thereof to Bucharest Court of Appeal, if such decision was issued by the General Immigration Inspectorate, or to the court of appeal within which jurisdiction to hear the case the territorial issuing authority has its headquarters. The court shall decide on the appeal within 30 days from the date of the receiving thereof. The court decision shall be irrevocable.

Replies to the issues raised in paragraph 28 (e) of the list of issues

389. Law no. 487/2002 on the mental health and the protection of the persons with mental illness, republished, stipulates:

> "Art. 41
>
> (1) Any person with metal illness is entitled to the best available medical and mental care services.
>
> (2) Any person suffering of mental illness has the right to exercise all his/her civil, political, economical, social and civil rights recognized within the Universal Declaration of Human Rights, as well as in any other international conventions or treaties in the field to which Romania has acceded or become a party of, with the exception of the situations provided for by the law.

(3) Any person suffering of mental illness has the right, to the widest possible extent, to live and work amongst society. The public local administration, through its competent bodies, shall ensure the integration or reinsertion to professional activities due to the health situation and to the social and professional reinsertion capacity of the persons with mental illness;

(4) Any person with mental illness has the right to community care, in the sense of this law.

Art. 42

(1) Any patient with mental illness has the right to:

(a) The recognition as a person, according to the law;

(b) Private life;

(c) The freedom of communication, especially within the health care unit, the freedom to send and receive private messages with no censorship, the freedom to receive private visits of a counselor or of a legal or conventional representative, and whenever it is possible, of other visitors, the freedom to access the post and phone services, as well as newspapers, radio and television;

(d) The freedom of thinking and of opinions, as well as the freedom of religious faith.

(2) The environment and the living conditions within the mental health care units have to be as close as possible to the normal life of the persons of that age;

(3) For spending the leisure time, any patient with mental illness has the right to:

(a) Educational means;

(b) The possibility of buying or receiving items necessary for the everyday life, for entertainment or communication;

(c) Means allowing the patient to have some active preoccupations, adapted to his/her social and cultural environment, encouragements to use such means and measures for professional re-adaptation, aiming at making easier his/her reinsertion within the society.

(4) The patient cannot be made to carry out forced labour.

(5) The activity carried out by a patient within a mental health care unit shall not allow his/her physical or psychical exploitation."

Replies to the issues raised in paragraph 29 of the list of issues

390. There is no information within the M.I.A. on this subject.

Replies to the issues raised in paragraph 30 of the list of issues

391. The meaning of the legal framework of the enforcement criminal law, security guard, supervision and escorting of persons deprived of liberty are a series of actions and measures taken by the administration of the place of detention, which aim, among other things, at the individual and collective protection of inmates and staff equally.[14]

[14] Art. 195 of the Regulation for enforcing the Law no. 275/2006.

392. During the serving of sentences, any form of discrimination on grounds of race, nationality, ethnic origin, language, religion, gender, sexual orientation, views, political affiliation, beliefs, property, social origin, age, disability, non-infectious chronic illness, HIV/AIDS or other grounds is prohibited. Violation of these provisions is punishable according to the criminal law.[15]

393. Within penitentiaries, by decision of the Director-general of the N.A.P., inner or outer wards of penitentiaries may be established, in relation to the enforcement of sentences of imprisonment, the categories of convicted persons and the special requirements for protection of certain categories of convicted persons.[16]

394. The distribution in wards and cells takes into account the following: the safety measures to ensure order and discipline, proper protection of minors and young people, of those with psychiatric or developmental disabilities, vulnerable persons, non-smokers and persons referred to in art. 17 of the aforementioned Law and for which reasons protection is required against other categories of persons deprived of liberty.[17]

395. The medical examination of persons sentenced to deprivation of liberty is carried out in prisons at reception and during the serving of the sentence, on a regular basis. The medical examination shall be carried out under conditions of confidentiality.

396. The doctor who performs the medical examination is required to refer the matter to the Prosecutor if he finds that the person sentenced has been subjected to torture, inhuman or degrading treatment or other ill-treatment, as well as to write in the medical records the findings and statements of the person convicted in connection with these acts or any other aggression declared by the latter.

397. In the cases referred to above, the person sentenced to a penalty involving deprivation of liberty shall have the right to ask to be examined, at the place of detention, by a forensic doctor or a medical practitioner from outside the penitentiary system, designated by the convicted person. The findings of the doctor from outside the penitentiary system shall be written in the medical records of the convicted person and a forensic certificate shall be attached to the medical records, after the inmate has become aware of its contents and sign to this end.[18]

398. By the Order No.1676/C/2010 issued by the Minister of Justice a Regulation on the safety of places of detention under the National Administration of Penitentiaries was approved. The aforementioned act provides in its art. 15 that for planning, organizing, directing and executing contingency missions the following documents shall be used:

- Handbook of procedures used by negotiators in managing critical incidents;
- Incident management handbook: volume I-manage operational incidents and volume II-managing critical incidents;
- Handbook on the structures associated to special security measures, coercion and control as well as for the use of means and techniques of restraint.

399. The same legislative act (Regulation on the safety of places of detention under the National Administration of Penitentiaries), in its Chapter VII, articles 290-302, regulates the procedures of intervention and restraint, as provided for in article 198 (2) of the

[15] Art. 195 of the Regulation for enforcing the Law no. 275/2006.
[16] Art. 195 of the Regulation for enforcing the Law no. 275/2006.
[17] Art. 195 of the Regulation for enforcing the Law no. 275/2006.
[18] Art. 51 of Law no. 275/2006.

regulation for enforcing the Law No. 275/2005, approved by Government Decision No. 1897/2006, as amended and supplemented.

400. Chapter VII of the Regulation on the safety of places of detention under the National Administration of Penitentiaries defines the incidents, necessity and proportionality, duration of intervention procedures and restraint use. There are also laid down the rules to be followed before, during and after the intervention in an incident.

401. The mode of action for resolving incidents and operational critical incidents is provided in the manuals mentioned above.

402. At the end of 2009, the following were completed within the project PHARE RO 2005/018-147.01.04.07.01 – "The development of prisons in Romania": the Negotiator's Manual and the Manual for managing incidents (vol. 1 – operational incidents and vol. 2 – critical incidents), as well as a medium and long term training Plan, for the training of negotiators and staff involved in the management of crisis situations.[19]

403. Regarding the vulnerability of certain categories of persons deprived of liberty, it should be mentioned that the minors serving a sentence involving deprivation of liberty in the units subordinated to the N.A.P. represent a category of special intervention of the criminal law. Their recuperation requires activities and specific recuperative working methods integrated into an approach adapted to their particularities of psychosomatic and personal development needs.

404. Thus, by decision no. 403/22.02.2012 of the Director-general of the N.A.P. relating to the treatment guidelines of minors sanctioned with a prison sentence, several measures were established to ensure the minor's custody, education and nature reducing negative consequences of deprivation of liberty, as follows:

"(...)

8. In the case of minors identified with risk of vulnerability, protective measures are promoted: awareness and monitoring, taking measures for isolation/separation of community/victim under suspicion of occurrence of incidents.

9. Whenever the minors accuse manifestations of vulnerability, health problems or there are signs of anticipated violence or self harm, they are presented without delay to the medical office and the psychologist.

10. For all minors deprived of their liberty who were involved in aggressive incidents in the detention space, an emergency medical check up is provided (a general or, as appropriate, specialized one) as well as a psychological counseling on social problems.

(...)

Specific activities

(...)

10. Minors identified with risk of abuse/victimization (who suffered from any form of mental, physical or sexual violence), shall be provided with at least one of

[19] These include effective methods of solving the crisis and improving the professional skills of the staff of the National Administration of Penitentiaries, through the Organization of training sessions. The two manuals were designed and structured so that the concepts presented to conform to the current vision of the leadership of the National Administration of Penitentiaries for resolving incidents and intervention, in the context of the reorganization of prisons through profiling, as well as administrative-territorial regionalisation.

the services of individual counseling – educational, psychological on social problems, aiming to prevent victimization.

(...)

Staff responsibilities

(...)

8. In the event of adverse events among minors deprived of liberty, the Coordinator of the social reintegration structure of the prison shall notify, without delay, The vulnerable people sector within the Directorate for social reintegration, on the nature of the incident and the measures that have been taken in consequence thereof, from the perspective of the education and psychosocial assistance."

405. Also, by letter no. 92160/DRS/19.12.2011of the Director-general of the N.A.P., there were determined as duties of the personnel responsible at prison level the prompt ensuring of specific interventions in prevention and neutralization of the risk factors associated with negative incidents occurred among minors.

406. Hence, the expression of aggressive behavior among minors in custody requires immediate reporting to the specialized departments of the Central Administration, highlighting the measures taken by the management of the unit. In preventing negative incidents, a central role is played by the education and psycho-social assistance staff, directly involved in knowing the state of mind of the inmates and their corresponding counseling specialty area.

407. Regarding the issue of violence among inmates and sexual assault in the case of adult convicted to imprisonment, the following can be noted:

408. Upon being handed over, all persons deprived of liberty are evaluated on three axes: education, psychological support and social assistance. These approaches determine the intervention and specialized assistance during the execution of criminal sentences, in the Plan of individualized assessment and educational and therapeutic intervention. Under this plan for every person convicted, activities and programs are recommended to go through in order to facilitate his/her social reinsertion. So, inmates identified with potentially aggressive behavior or convicted for crimes of a sexual nature, and those with aggressive behavior shown throughout serving the penalty of imprisonment or who commit sexual assaults during the period of detention may be included (in accordance with the recommendations contained in the Evaluation and Educational intervention Plan) in specialized assistance (psychological support specific programs) programs as follows:

- Specific Program of psychological and social assistance for persons with aggressive behavior;
- Specific programs of psychological and social assistance for reducing relapse cases in sexual abuse.

409. Also, according to the procedure PS-015 – psychological counseling of persons deprived of liberty (issue 1, 2011), the aforementioned measure is a consecutive action that highlights the psychological assessment, the need for this type of intervention and which is addressed to the inmates identified as belonging to the categories listed above (inmates with difficulties of managing sexual impulses, with difficulties to manage aggressiveness/ victims of physical or sexual assault).

Replies to the issues raised in paragraph 31 (a) of the list of issues

410. As far as the Romanian Gendarmerie is concerned, the available statistical information reveals that 4 complaints for allegedly excessive use of force (abusive conduct)

were filed – against one officer and 3 NCO's gendarmes. All four persons were sentenced and discharged.

411. It should be underlined that in order to achieve social inclusion of the Roma minority, but also for other national minorities, there have been allocated places within the training institutions, a process that is currently planned to unfold over the coming years (e.g. for the Roma minority, a total 14 seats in 2011, 6 seats in 2012 and 24 seats in 2013);

412. In terms of the number of persons belonging to national minorities employed in public order and safety structures, at the end of 2012, the total number of Roma people was 174.

413. In the reference period, "Al.I. Cuza" University Bucharest organized for Roma citizens of entrance examination as follows:

Admission session 2008:

- 10 places for police specialization: 9 places occupied;
- 2 places for border police specialization: 0 places occupied;
- 3 places for gendarmerie specialization: 0 places occupied;
- 1 place for firefighter specialization: 0 places occupied.

Admission Session 2009:

- 10 places for police specialization: 10 places filled in;
- 2 places for border police specialization: 0 places occupied;
- 3 places for gendarmerie specialization: 3 places occupied;
- 1 place firefighter specialization: 0 places occupied.

Admission Session 2010:

- 10 places for police specialization: 10 places filled in;
- 2 places for immigration specialization: 1 occupied place;
- 5 places for gendarmerie specialization: 2 places occupied;
- 1 place for firefighter specialization: 1 occupied place.

Admission Session 2011

- 6 places for police specialization: 6 places occupied;
- 1 place for border police specialization; 0 places occupied;
- 3 places for gendarmerie specialization: 0 places occupied.

Admission Session 2012

- 1 place for police specialization: 1 occupied place;
- 1 place for border police specialization: 0 places occupied;
- 1 place for gendarmerie specialization: 1 occupied place.

For the admission for the session 2013 the following was proposed:

- 2 places police law specialization;

- 4 places for police, public order and safety specialization;
- 1 place for border police specialization;
- 1 place for gendarmerie specialization;
- 1 place for firefighter specialization.

Replies to the issues raised in paragraph 31 (b) of the list of issues

414. There is no special provision on Roma eviction. The civil procedure code stipulates in its Title XI the procedure for the eviction from the used or unlawfully occupied properties, with no distinction according to the minority the evicted persons belong to.

"Art. 1.039 – Volunteer evacuation

(1) If the tenant or the occupier who has been notified under the conditions of this title has left the immovable, the renter or the landlord may get into its possession ex lege, with no judicial procedure for the evacuation. If not, the provisions of this chapter shall become applicable;

(2) It shall be alleged that the immovable has been left in the situation of the ceasing of the economic activity or ceasing the using of the immovable by the tenant or occupier or by the person under their control, as well as in the situation of giving back the keys of the building, taking the equipments, merchandise or other movable goods within the building.

Art. 1.040 – Filing the claim to the court.

If the tenant or the occupier has given up his/her right to be notified and has lost, due to any reasons, the right to use immovable, the renter or the landlord shall ask to the court to order, through an enforcement decision, the immediate evacuation of the tenant or occupier of the immovable, due to lack of title.

Art. 1.041 – Trying procedure. Means of judicial review.

(1) The evacuation claim shall be tried with summoning the parties, but in the case the evacuation of the immovable for non payment of the rent or of the lease is asked for on the basis of a contract which represents, for such payment, writ of execution, according to the law.

(2) The evacuation claim shall be tried on emergency, within the judge's chamber, with summary debates, if the parties have been summoned;

(3) The statement of defence shall not be mandatory;

(4) If the payment of the claimable rent or lease has also been asked for, the court, with the summoning of the parties, may also order the defendant, at the same time with the evacuation, the payment of such debts, including the amounts which have become claimable during the trial;

(5) The evacuation decision shall be enforceable and may be challenged only with appeal in a term of 5 days since the delivering thereof, if it has been delivered with the summoning of the parties, or since the communication, if it has been delivered without the summoning of the parties.

Art. 1.042 – The defense of the defendant in the situation of trying after summoning the parties

(1) The defendant against whom a claim was filed, according to the procedure of this title, cannot formulate a counter claim, a claim for a mandatory intervention, or

on the intervention of another person as a guarantor, the claims of the defendant shall be solved only in a separate trial.

(2) The defendant may invoke only defenses on the merits of the case regarding the de facto and de jure grounds of the claim, including the lack of the title of the plaintiff.

Art. 1.043 – Contestation against the enforcement of a decision.

The enforcement of the evacuation decisions may be challenged by the interested people with a contestation against the enforcement of the decision, under the conditions provided for by the law.

Art. 1.044 – The suspension of the enforcement

(1) The enforcement of the evacuation decision cannot be suspended. Nevertheless, in the situation of the evacuation for the non payment of the rent or of the lease the suspension of the decision enforcement may be ordered within the contestation against the enforcement decision or of the appeal filed by the defendant, but only if the defendant makes a cash deposit, at the disposition of the creditor, with the rent or the lease amount he/she was sentenced to, the amount established for ensuring the payment of the rent or lease installments owned up to the date of the suspension request, as well as the amount due to the payment of the rent or lease installments which would become claimable during the trial.

(2) The suspension shall cease ex lege if, at the expiry of the term for which the rent or the lease has been covered, the debtor does not ask and does not make a cash deposit with the amount sentenced by the enforcement court for the covering of new rent installments, under the conditions provided for by para (1)."

415. In all cases, the actions are performed in compliance with the legal provisions and procedures in force in order to reduce to the minimum the risk of negative events.

416. The additional measures are aiming at training programs regarding the prevention of using excessive force irrespective of the difference of sex, race etc. between citizens.

417. Complaints dealing with the excessive use of force by the M.I.A. staff fall under the criminal law rules and procedures (the offense of abusive behavior laid down in art. 250 of the CrC). The prosecutor shall deal with the aforementioned case (art. 209 para. 3 of the CrPC). There are no statistical data within the General Inspectorate of the Romanian police (hereinafter, the G.I.R.P.) on the aforementioned issues.

Article 14

Replies to the issues raised in paragraph 32 (a) and (c) of the list of issues

418. The victims of crimes have the possibility to apply for compensations, either within the criminal trial, either through a different action, in front of a civil court. These possibilities are regulated by art. 14-20 of the CrPC. The civil action stays under the competence of the criminal court in the situation of the death of one of the parties, and his/her heirs shall be introduced in the pending trial (art. 21 of the CrPC).

419. During the last years, the general framework for the protection of victims has been set up, through the adoption, in 2004, of Law no. 211 on some measures for the protection of the victims of crimes, and of some specific regulations for the categories of victims considered to have a high level of vulnerability: children –Law no.272/2004 on the promotion and protection of the child's rights, the victims of the trafficking in human

beings –Law no. 678/2001 on the trafficking in human beings, the victims of the domestic violence –Law no. 217/2003 on preventing and fighting the domestic violence.

420. Starting form the above mentioned legislation, in Romania the victims of crimes benefit from the following protection measures:

- Information on their rights,
- Psychological counseling or other assistance forms,
- Legal aid,
- Financial compensation.

(a) Psychological counseling or other assistance forms for the victims of crimes

421. Psychological counseling is granted to the victims of crimes which have been perpetrated with violence or have affected the sexual liberty of a person, thus producing not only a physical trauma but also a psychological one. These crimes are the attempted murder, qualified murder and first degree murder, heating or other violence and serious bodily injury perpetrated against the family members, as well as the intentional crimes which resulted into the serious bodily injury of the victim, rape, sexual act with a minor, sexual perversion against a minor or perpetrated with violence, sexual corruption and ill treatments against the minor. Psychological counseling shall also be granted to the victims of the crimes stipulated in Law no. 678/2001 on preventing and fighting trafficking in human beings. The institutional mechanism ensuring the psychological counseling of victims is represented by the probation services attached to the tribunals. Within the probation services the psychological counseling is granted free of charge for a period of maximum 3 months, and for the victims who are not 18 yet, during a period of maximum 6 month.

422. Also, the victims of crimes may benefit from other forms of assistance, as the reference to other bodies within the local community, which can adequately meet their needs.

423. The psychological counseling or the other forms of assistance may be also offered by the NGOs, independently or through a partnership with the public administration authorities.

(b) Free legal aid

424. According to the current legal framework, the legal aid is granted, on request, to certain categories of victims, taking into account, on one hand, the seriousness of the crime, and on the other hand, the material situation of the victim.

425. Thus, the legal aid shall be granted, first of all, to the direct victims of the serious crimes perpetrated with violence (attempted murder, qualified murder and first degree murder, serious body injury perpetrated against the family members, as well as the intentional crimes which resulted into the serious body injury, or intentional crimes which resulted into the serious body injury of the victim) or serious crimes against the sexual life of a person (rape, sexual act with a minor, sexual perversion against a minor or perpetrated with violence). Legal aid shall be also granted to indirect victims of serious crimes (spouse, children and those under the maintenance of the direct victims deceased as a result of the crimes).

426. Secondly, the legal aid shall be granted to the victims of other crimes than the above mentioned ones, no matter the nature of the crime, if the monthly income per family members of the victim is at most equal to the national minimum gross basis salary established for the year in which the victim has filed the request on free legal aid.

427. In both situations, granting the free legal aid is subject to the condition that the crime has been perpetrated on Romania's territory or, in the situation of the crimes perpetrated outside Romania's territory, that the victim was a Romanian citizen or a foreigner who has the legal domicile or residence in Romania and the criminal trial takes place in Romania.

428. In order for the victim to benefit from free legal aid, the currently in force legislation mentions a specific procedure to be carried out to this end.

(c) Financial compensation

429. The system regarding the financial compensation of the victims of the violent crimes is based on the principles of equality and social solidarity. The reality is that, before this special law, any time when the perpetrator remained unidentified, was insolvable or disappeared, the "costs" of the crime incurred exclusively to the victim, which naturally led to re-victimization.

430. Currently, the financial compensation is granted, on request, to the direct victims of the serious crimes perpetrated with violence (attempted murder, qualified murder and first degree murder, serious bodily injury perpetrated against the family members, as well as the intentional crimes which resulted into the serious bodily injury, or intentional crimes which resulted into the serious bodily injury of the victim) or serious crimes against the sexual life of a person (rape, sexual act with a minor, sexual perversion against a minor or perpetrated with violence). It is also granted to indirect victims of murder crimes and of the intentional crimes which resulted into the death of the person (spouse, children and those under the maintenance of the direct victims deceased as a result of the crimes). These compensations are granted under certain conditions and according to a procedure set up by the law (please, see the statistical information provided in the Annex to the present report).

431. On 25th October 201, the Directive 2012/29/EU of the European Parliament and of the Council establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA was adopted. This is an essential part of the horizontal measure package, launched by the European Commission in May 2011, aiming at strengthening the right of the victims of crimes, so that any victim can have the same rights – no matter their nationality and wherever in the EU the crime would be perpetrated. The Member States shall adopt the legislation for the transposition of the Directive until 16th November 2015.

Replies to the issues raised in paragraph 32 (b) of the list of issues

432. There is no available information on this matter.

Article 15

Replies to the issues raised in paragraph 33 of the list of issues

433. As already mentioned earlier in the present report, torture is prohibited and punished by the CrC.

434. Moreover, art. 266 of the CrC provides in its para. 2 the following with respect to unlawful arrest and abusive investigation:

> "The use of promises, threats or violence against any person under investigation, criminal inquiry or trial, in order to obtain any statements, shall be punishable with imprisonment from one to 5 years."

435. The aforementioned should be read in conjunction with the following from the CrPC:

"Art. 64 para. 2:

The evidence unlawfully obtained may not be used in the criminal trial."

"Art. 68:

Prohibiting constraining means

(1) The use of violence, threats or any other constraining means, as well as any promises or influence, in order to obtain evidence shall be prohibited.

(2) Also, determining a person to commit or continue committing a criminal offence in order to obtain evidence shall be prohibited."

Article 16

Replies to the issues raised in paragraph 34 of the list of issues

436. According to the Subject-related control plan within the public health system, a team within the Public Health Department of Dolj County conducted a hygienic and sanitary control on April, 2nd 2013 at Poiana Mare Psychiatric Hospital. According to the findings of the control mission, some buildings were damaged on the exterior part. They are undergoing repairing works. Also, the food unit was found inappropriate but measures were taken and now it functions in adequate conditions. The analysis of the deaths occurred in 2012 carried out by a Committee of the Ministry of Heath Control Body in February 2013 found that there had been 16 deaths. Nevertheless, none of them was triggered by degrading or cruel treatment or punishments. The Forensic Institute in Dolj County certified the aforementioned after performing the respective autopsies.

437. Nucet Psychiatric Hospital has a Department of prevention and control of nosocomial infections made up of the following persons: one epidemiologist and one hygiene medical assistant. Their role is to supervise and maintain the quality standards of the hygienic and sanitary conditions, including of the micro environment (the hospital has its own heating system). The hospital also has its own food unit. When the controls were carried out, the ill person's food menu was also checked. No deficiencies were found. Since 2012, the management of the hospital placed surveillance cameras to monitor how ill persons are treated and to identify possible staff misconducts. During 2004 – 2012, no low protein and calorie malnutrition death was reported within the Statistics Unit of Bihor County DPH coming from Nucet Psychiatric Hospital.

Replies to the issues raised in paragraph 35 of the list of issues

438. The Anti-Corruption General Directorate (hereinafter, the A.G.D.) was established by Law no. 161/2005 on regulating certain measures for preventing and combating corruption within the Ministry of Administration and Interior, as the specialized structure for preventing and combating corruption within the ministry's personnel and conducts its activity based on the Government Emergency Ordinance No. 120/2005 on the functioning of the Anti-Corruption General Directorate.

439. The A.G.D. was set up as the unit specialized in preventing and countering corruption within the M.I.A. personnel, being directly subordinated to the minister of internal affairs from the administrative point of view. As judiciary police, A.G.D. officers are operationally coordinated by the case prosecutor, when carrying out investigations.

440. As regards public policies, A.G.D.'s activity had as guidelines the National Anti-corruption Strategy for 2005-2007, the M.I.A. Strategy for preventing and countering corruption within the ministry's personnel (the Order of the M.A.I. Minister no. 1150/2006), the National Anti-corruption Strategy regarding the vulnerable sectors and the

local public administration for 2008-2010, the Strategy of the Ministry of Administration and Interior[20] for preventing and countering corruption for 2011 – 2013, approved by the M.A.I. Minister Order no. 64/30.03.2011, the Strategy for AGD's institutional development for 2010 – 2013, approved by the Disposition of the General Director, the Concept on the measures for the prevention of corruption deeds within M.A.I. structures for 2009-2012, a document which defined the concept and the action framework in the field of preventive activities to be taken with regards to M.I.A. employees.

441. It should be mentioned that within the reference timeframe, 2008-2012, the aforementioned institution did not register any cases regarding corruption crimes related to torture, as referred to in articles 12 and 13.

442. Since 2011, the I.S.P.O. has organized a training course on torture prevention that addresses police operating in public order, criminal investigation and detention matters.

443. Regarding the legal framework, it is worth mentioning that, according to Law nr.275/2006 (art. 4), "subjecting a person serving a sentence to torture, inhuman or degrading treatments or other ill-treatment is strictly forbidden".

444. The National Anticorruption Directorate (hereinafter, the N.A.D.) is the specialized body within the Prosecutor's Office attached to the High Court of Cassation and Justice which deals with judiciary corruption cases. According to institution annual reports published on its official website, part of the indictments of the N.A.D. led to convictions in magistrate corruption cases. To this end, the 2012 Annual Report can be accessed at: http://www.pna.ro/faces/results.xhtml.

Replies to the issues raised in paragraph 37 of the list of issues

APALINA case information

445. See the following APALINA case information:

- On September 7th 2012, at about 15.00 hrs, a police officer from Mures County Police Inspectorate reported that, while he was walking in front of a company in Reghin municipality he was physically and verbally assaulted by two people in Reghin municipality, Apalina district. The two persons had criminal record and were known by police as extremely violent offenders.
- A complex investigation team was set up and included police officers from Mures County Police Inspectorate and Reghin City Police, together with a troop within the Special Task Force.
- In order to apprehend the perpetrators, under the coordination of the Prosecutor's Office attached to Reghin Court, the research team went to Apalina district where they found approximately 150 citizens who exhibited a violent behavior and who began to attack police officers with bats, farm forks, scythes, stones and other sharp objects, endangering the life and bodily integrity of the police officers. Under these circumstances, the police officers and especially the staff of the Special Action Service used specific means of intervention they had been equipped with, i.e. rubber bullets, tear gas.
- Following the events, six police officers from the Special Task Force had suffered injuries requiring medical care. Moreover, 15 citizens suffered injuries that were caused as a result of police intervention.

[20] At present: the Ministry of Internal Affairs.

446. With regard to the police intervention, the Prosecutor's Office attached to Mures Tribunal conducted an investigation in the criminal file no. 704/P/08.09.2006 and decided not to prosecute the police officers.

447. As previously mentioned (in replies to the issues raised in paragraph 26), the Public Ministry does not collect statistical information on the nationality/ethnical origin of the victim and therefore such information cannot be provided.

(a) As regards the "Hădăreni" case, this was the subject of the criminal file No. 1/P/1993 of the Prosecutor's Office attached to the Târgu Mureş Appellate Court. The decision bearing the same number of Augusts 12, 1997 committed for trial the following defendants B.P., B.P., G.N., B.V.D., and P.S.I. for the crimes provided by Article 174 to 175 (e) of the CrC, Article 176 (a) (b) and (c), Article 217 of the CrC, and Article 321 of the CrC, and of the defendants B.V., B.N., B.I., V.O., B.V., and F.S. for the crimes provided by Article 217 (1) and Article 321 of the CrC. The criminal decision no. 157 of July 1998 of the Mureş Tribunal, rendered final by the criminal decision no. 4252 of November 22, 1999 of the High Court of Cassation and Justice, sentenced the defendants to 1 to 5 years imprisonment penalties.

(b) Regarding the case "Casinu Nou", this was the subject of the criminal file no. 104/P/1990 of the Prosecutor's Office attached to the Harghita Tribunal. Pursuant to Article 10 (g) of the CrC, the decision bearing the same number of September 7, 2005 ordered the non-initiation of the criminal prosecution in this case (the perpetrators were not identified) for the crime provided by Article 217 of the CrC.

(c) As regards the case "Plăieşii de Sus", this was the subject of the criminal file no. 102/P/1991 of the Prosecutor's Office attached to the Harghita Tribunal. Pursuant to Article 11 (1) (a) referred to Article 10 (g) of the CrC, the decision bearing the same number of June 22, 1996 dismissed the action for the crime provided by Article 217 of the CrC, and the severance of the crime provided by Article 183 of the CrC in view of further investigations.

448. Later, the decision no. 66/P/1996 of November 7, 1999 delivered by the same prosecutor's office, ordered, pursuant to Article 11 (1) (c) referred to Article 10 (g) of the CrC, the ceasing of the criminal proceedings for the crime provided by Article 183 of the CrC.

Other issues

Replies to the issues raised in paragraph 38 of the list of issues

449. At national level, preventing and countering terrorism is achieved in accordance with the provisions of the international conventions on suppression of terrorism Romania is party to, and in compliance with the international regulations and national legislation relating to human rights.

450. The National System for the prevention and countering of terrorism set up in Romania allows all public authorities and institutions involved to address the terrorist phenomenon through a unified effort and in an integrated manner, the law enforcement agencies and intelligence services being main promoters of this approach.

451. The Romanian Intelligence Service, as national authority in preventing and countering terrorism, is empowered by law to carry out activities for gathering knowledge, preventing and countering threats to national security, in connection with terrorism.

452. In this respect, in order to take the necessary measures to suppress the evolution of facts, situations and circumstances towards severe forms that may affect national security,

the Service makes use of adequate means to obtain, check, process and stock information concerning national security, that it turns to good account, including by informing all competent authorities and institutions.

453. In this context, we must add that the main measures the Romanian Intelligence Service has proposed in the field of preventing terrorism were formulated in compliance with the safeguards provided by the Constitution and the relevant national legislation and aimed at:

- Declaring persons as undesirable aliens;
- Refusing entrance in Romania;
- Refusing the right for a long stay in Romania;
- Refusing or withdrawing Romanian citizenship;
- Refusing Romanian visa;
- Refusing or cancelling the refugee status and subsidiary protection.

454. It is important to note that the Service has no law enforcement powers and the activities that require the temporarily restriction of the exercise of fundamental rights and freedoms of individuals are carried out only with the authorization of specially appointed judges of the High Court of Cassation and Justice.

455. Criminal prosecution in terrorism cases is carried out under the coordination of a specially designated prosecutor from the Prosecutor's Office of the High Court of Cassation and Justice – Directorate for Investigating Organized Crime and Terrorism.

456. In order to determine the existence of crimes, to identify all the perpetrators, to gather evidence and knowledge of the facts, the criminal prosecution body may request the specialized support of the Romanian Intelligence Service.

457. Moreover, Law no. 535/2004 on preventing and fighting terrorism includes guarantees on the compliance with human rights in the situation on threats to Romania's national security. Hence, the legislator has mentioned that the High Court of Cassation and Justice has the right to authorize the carrying out of certain activities for the purpose of gathering information, consisting of: intercepting and recording the communications, searching for information, documents or written papers for whose obtaining is necessary to have access to a place, to an object or to open an object; lifting and putting back an object or a document, the examination of such object or document, extracting the information they contain, as well as recording, copying or obtaining excerpts through any procedures; installing objects, their maintenance and lifting from the places they have been deposited.

> "Art. 20
>
> The threats to Romania's national security, stipulated at art. 3 of Law no. 51/1991 on Romania's national security, including the terrorism deeds provided for by this law, shall be the legal ground for the state bodies with attributions in the field of the national security, in justified situations, to file to the prosecutor a proposal for him/her to ask for the authorization of carrying out certain activities for the purpose of gathering information, consisting of: intercepting and recording the communications, searching for information, documents or written papers for whose obtaining is necessary to have access to a place, to an object or to open an object; lifting and putting back an object or a document, the examination of such object or document, extracting the information they contain, as well as recording, copying or obtaining excerpts through any procedures; installing objects, their maintenance and lifting from the places they have been deposited.

Art. 21

(1) The proposal shall be formulated in written and it shall contain: data or leads indicating the existence of a threat to the national security, for whose disclosure, preventing or combating it is necessary the issuing of such authorization; the categories of activities needing authorization for being carried out; the identity of the person whose communications must be intercepted, if it is known, or of the person who holds the information; the documents or the objects which must be obtained; the general description, if and when possible, of the place where the authorized activities are to be carried out; the period of the validity of the authorization.

(2) The proposal shall be filed to the General Prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice and it shall be examined under the aspect of the solidity of its grounds and legality by prosecutors appointed to this end.

(3) If the prosecutor finds that the proposal is unjustified, he/she shall dismiss it through reasoned resolution, communicating it immediately to the body who has formulated the proposal.

(4) If in a term of 24 hours since the registration of the request, it is found that the proposal is grounded and all the conditions provided for by the law are met, the General Prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice or the legally appointed prosecutor shall file a request to the president of the High Court of Cassation and Justice for the authorization of the proposed activities.

(5) The request shall have to contain the data mentioned within para (1).

(6) The request shall be examined in the Judges' Chamber by judges appointed by the president of the High Court of Cassation and Justice, which shall admit or dismiss the request by reasoned minute.

(7) In the situation in which the request is dismissed, it shall be sent back to the prosecutor, together with a copy of the minute.

(8) If the judge finds the request to be justified, he/she shall issue, at the same time with the admitting minute, a warrant authorizing the carrying out of the proposed activities.

(9) he warrant shall be handed over to the appointed representative of the body which has proposed the authorization and it shall contain: the categories of communications which may be intercepted, the categories of information, documents or objects which can be obtained; identification data of the person whose communications must be intercepted or of the person holding such data, information or objects which must be obtained, if they are known; the general description of the place in which the warrant is to be enforced; the body empowered with the enforcement of the warrant; the period of the warrant validity.

(10) The period of the warrant validity cannot be longer than 6 months; in well grounded situations the judges appointed by the president of the High Court of Cassation and Justice may prolong, on request, the warrant period of validity, each prolongation being of maximum 3 months.

(11) In this situation, the procedure provided for by para. (1)-(9) shall be applied.

(12) Requesting, issuing and enforcing the warrant shall be done with the compliance of the provisions of Law no. 182/2002 on the protection of classified information.

(13) The bodies which have proposed the authorization of the activities for which the warrant has been issued have the obligation to interrupt them immediately when the grounds for which they have justified such activities have ceased and to inform on this the General Prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice.

(14) The same bodies have the obligation to inform in written the General Prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice on the result of the authorized of the activities mentioned within the warrant and on the measures which have been taken, according to the law.

Art. 22

(1) In special situations which require preventing certain imminent dangers for the national security, the specialized state bodies with attributions in this field may carry out the activities provided for at art. 20, without the above mentioned authorization, and after that the request shall be filed as soon as possible, but no longer than 48 hours.

(2) If the judge considers that continuing the activities provided for by para (1) is no longer necessary, than he/she shall order immediately the ceasing thereof."

458. As far as the M.I.A. training activity is concerned, specific human rights training programs are carried out.

459. As an example, the Manual on information and training of Romanian gendarmerie staff in the field of humanitarian law and respect of human rights matters can be mentioned.

460. Also, a work was published in 2012 at M.I.A. publishing house called "Tactical and Operational System of Protection". It is a second edition and comprises references to the principles used in elaborating this combat style, resulted from police operational needs, concerning the respect of human rights.

461. The Special Intervention Task Force within the G.I.R.P. participates at international seminars on counter terrorism, is affiliated to the A.T.L.A.S. European group (which is made up of all elite EU police task forces), takes part to working groups and organizes ample exercises to efficiently respond to any type of threat.

462. According to the curriculum of continuous training of the Romanian police task force, special training activities are dedicated to the procedure of escorting the suspects and arrested persons as well as to the procedure of legal warnings.

463. All the above mentioned are undertaken in full compliance with international and national legislation, with full respect of fundamental rights and freedoms. There have been no complaints in the last 4 years.

Replies to the issues raised in paragraph 39 of the list of issues

464. As far as the Optional Protocol to the Convention, please see information on paragraph 8 of the list of issues.

465. Regarding the Convention on the Rights of Persons with Disabilities, we would like to mention that Romania ratified it by Law No. 221/2010, published in the Official Journal, No. 792 from November 26th 2010.

Replies to the issues raised in paragraph 40 of the list of issues

466. Once the civil code entered into force on October 1st 2011, a series of amendments had been brought and the "Respect for human being and for the inherent rights thereof" matters are stipulated in Chapter II, as follows:

"Art. 58 – Personality rights

(1) Any person has the right to life, health, physical integrity, dignity, his/her own image, respect for his/her private life, as well as other similar rights.

(2) These rights are not be transmissible.

Art. 59 – Identification attributes

467. Any person has the right to name, domicile, residence, as well as to a civil status, obtained according to the law.

Art. 60 – The right of a person to dispose of him/herself

468. The natural person has the right to dispose of him/herself, if this does not brake the rights and freedoms of other persons, the public order or decent behavior.

Art. 61 – Guarantees for the inherent rights of the human being

(1) Life, health and physical and psychic integrity of any person are equally guaranteed and protected by the law.

(2) The interest and the welfare of the human being has to prevail over the unique interest of society or science.

Art. 62 – Interdiction of eugenic practice

(1) No one can harm the human species.

(2) Any eugenic practice aiming at organizing the selection of persons is forbidden.

Art. 63 – Interventions on genetic characteristics

(1) Medical interventions on genetic characteristics, aiming at modifying the lineage of the person shall be forbidden, with the exception of those aiming at preventing and treating the genetic maladies,.

(2) Any intervention aiming at creating a human being genetically identical with another living or dead human being, as well as creating human embryos for research purposes, shall be forbidden.

(3) Using the medically assisted human reproduction techniques shall not be allowed for choosing the sex of the future child but to avoid a hereditary disease connected to the sex of the child.

Art. 64 – Inviolability of the human body

(1) Human body shall be inviolable.

(2) Any person has the right to his/her physical and psychic integrity. Nobody is allowed to hinder the integrity of the human being, but in the cases and under the conditions expressly and limitedly provided for by the law.

Art. 65 – Examination of the genetic characteristics

(1) The examination of the genetic characteristics of a person cannot be done but for medical purposes or scientific research, carried out under the conditions of the law.

(2) The identification of a person on the basis of his/her genetic prints cannot be carried out but within a civil or criminal judicial procedure, as the case may be, or for medical purposes or for scientific research carried out under the conditions of the law.

Art. 66 – Interdiction of some patrimonial deeds

Any deeds whose object is conferring a patrimonial value to the human body, to its elements or products shall be subject to absolute nullity, with the exception of the cases expressly provided for by the law.

Art. 67 – Medical interventions on a person

No person can be subject to experiments, tests, sampling, treatments or other interventions for therapeutic purpose or scientific research, but in the cases and under the conditions expressly and limtedly provided for by the law.

Art. 68 – Sampling and transplant from living persons.

(1) Sampling and transplant of human origin organs, tissues and cells from living donors shall be carried out exclusively in the cases and under the conditions provided for by the law, with their written, free, preliminary and express consent and only after they have been previously informed on the risks of the intervention. In each situation, the donor can review his/her consent, up to the moment of the sampling.

(2) Sampling and transplant of human origin organs, tissues and cells from minors and from living persons which lack discernment due to a mental handicap, to a serious mental disorder or to another similar reason shall be forbidden, but in the cases expressly provided for by the law.

Art. 69 – Filing the case to the court.

On the request of the interested person, the court can take all the necessary measures to impede or to make stop any illegal hindrance to the integrity of the human body, as well as to dispose on the repairing, under the conditions provided for the art. 252 - 256, the material and moral prejudices that person has suffered.

Art. 70 – The right to the freedom of speech

(1) Any person has the right to the freedom of speech.

(2) Exercising this right cannot be limited but in the cases and the limits provided for by art. 75.

Art. 71 – The right to private life

(1) Any person has the right to respect for his/her private live.

(2) No one can be subject to any interference in his/her intimate, private or family life, or in his/her domicile, residence or correspondence, without his/her consent or without the compliance to the limits provided for by art. 75.

(3) It is also forbidden using, in any way, the correspondence, handbooks or other personal documents, as well as the information on the private live of a person, without his/her consent or without the compliance to the limits provided for by art. 75.

Art. 72 – The right to dignity

(1) Any person has the right to respect for his/her dignity.

(2) It is forbidden any hindrance brought to the honor and reputation of a person, without his/her consent or without the compliance to the limits provided for by art. 75.

Art. 73 – The right to one's own image

(1) Any person has the right to his/her own image.

(2) In exercising the right to his/her own image, one can forbid or impede the reproduction, in any way, of his/her physical look or voice, or, as the case may be, the using of such reproductions. The provisions of art. 75 remain applicable.

Art. 74 – Hindrances brought to private life

Under the reserve of applying the provisions of art. 75, they may be deemed as hindrances brought to the private life:

(a) Entering or staying without any right in a residence or taking from it of any object without the consent of the person legally occupying that residence;

(b) Intercepting without any right a private conversation; made through any technical means, or using, being fully aware of that, of such interception;

(c) Capturing or using the image or the voice of a person located in a private space, without his/her consent;

(d) Displaying images presenting interiors of a private space, without the consent of the person legally occupying that space.

(e) Keeping one's private life under observation, through any means, but in the cases expressly provided for by the law;

(f) Broadcasting news, debates, investigations or written or audio visual reportages on the private, personal or family life of a person, without the consent of that person;

(g) Broadcasting materials containing images on a person being under treatment in medical units; as well on personal data regarding the state of health, diagnosis problems, prognostic, treatment, circumstances connected to the illness and to other various facts, including the result of the autopsy, without the consent of that person, or in the case the person is dead, without the consent of his/her family of the entitled persons;

(h) Using, in bad faith, one's name, image voice or look resemblance with another person;

(i) Broadcasting or using the correspondence, handbooks, or other personal documents, including the data regarding the domicile, residence as well the phone numbers of a person or of his/her family members, without the consent of the person they belong to or who, as the case may be, has the right to dispose of them.

Art. 75 – Limits

(1) It shall not be deemed a violation of the rights mentioned within this section the hindrances which are allowed by the law or by the international conventions and agreements on the human rights Romania is party of.

(2) Exercising the constitutional rights and freedoms in good faith and by compliance with the international conventions and agreements Romania is party of shall not be deemed a violation of the rights mention within this section.

Art. 76 – Presumption of consent

When the person an information or a material refers at puts such information at the disposition of a natural or legal person about whom he/she knows that it carries ou.

activities in the field of informing the public, the consent for using such data shall be presumed, and it shall not be necessary a written consent.

Art. 77 – Processing personal data

Any processing of the personal character data, through automatic or non automatic means, shall be carried out only in the situations and under the conditions provided for by the special law."

469. Also, Title V in the Civil Code is regulating the "defending the non patrimonial rights" as it follows:

"Art. 252 – Protecting the human personality

Any natural person has the right to the protection of the intrinsic values of the human being, as life, health, physical or psychic integrity, dignity, intimacy of the private live, freedom of conscience, scientific, artistic, literary or technical creation.

Art. 253 – Defending means

(1) The natural person whose non patrimonial rights have been broken or threatened may ask anytime the court for:

(a) Interdiction to perpetrate the illicit deed, if such deed is imminent;

(b) Ceasing the breaking and interdiction for the future, if this is still going on;

c) Finding the illicit character of the perpetrated deed, if the negative aspects it has produced still subsists.

(2) By exception from the provisions of para (1), in the situation of breaking the non patrimonial rights through the exercising of the freedom of speech, the court may order only the measures provided for by para (1) letters b) and c).

(3) At the same time, the person who has suffered prejudices due to a breaking of such rights may ask the court for having the author of such deed to accomplish any measures the court finds necessary to reestablish the broken right, as for example:

(a) Having the author, on his/her own expenses, to publish the conviction decision;

(b) Any other necessary measures for ceasing the illicit deed or for repairing the prejudice such deed has caused.

(4) Also, the prejudiced person may ask for compensations, or, as the case may be, a patrimonial repair for the prejudice, even a non patrimonial one, which he/she has suffered, if the prejudice is imputable to the author of the prejudicial deed. In such cases, the right to action shall be subject to statute of limitation."

470. Moreover, in our opinion, the entry into force of the CrC, the CrPC and of the laws on custodial and noncustodial sentences and on probation can entail a decrease of the number of inmates as a consequence of a redefinition of penalties and of the alternative punishments to imprisonment.

Replies to the issues raised in paragraph 41 of the list of issues

471. From the perspective of the National Administration of Penitentiaries, it should be considered that in this area, the strategic objectives are relevant, as established for the year 2013, among which:

- Ensuring respect for the rights of inmates will be carried out primarily by achieving the minimum standards for accommodation into all places of detention.
- The intensification of the activities of the theoretical and practical training of personnel of the force in order to implement the new rules and instructions on line safely and arrangements, in particular the incident management policies and the use of equipment and resources.
- Adaptation of activities and educational programs, psychological support and social assistance to the needs of inmates;
- Increasing the supply of quality parameters of the programs and activities of education, psychological support and social assistance, with a view to the inclusion of a large number of inmates in recuperative efforts tailored to the individual identified as well as the requirements of society.
- Community awareness of the importance of social reintegration of persons who have served sentences and the involvement of its representatives in the process of reducing the risk of recidivism by promoting and implementing the national strategy of social reintegration.

472. In accordance with the specific objectives set out in the strategic objectives of the National Administration of Penitentiaries, during the year 2013 the following can be mentioned: the work for the profiling of prisons will be continued, the conditions will be improved for the exercise by the inmates of their rights provided by law, according to the established sentence serving procedure, the management of incidents will be improved through the development of professional skills, the necessary joint efforts will be continued for the construction of new places of detention.

Replies to the issues raised in paragraph 42 of the list of issues

473. The latest developments since the last report have already been addressed at the previous points.